



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)Nos.6343, 6460 and 6468 to 6470 and 6477 of 2024

and

W.M.P(MD)Nos.5934, 5935, 6041, 6042, 6045, 6046 to 6050, 6058 and 6059 of 2024

W.P.(MD).No.6343 of 2024

Zirconium Complex,
Represented by its General Manager,
M.Periasamy,
GSTIN No.33AAALZ0205G1ZE,
Pazhayakayal, Tuticorin-628 152.

... Petitioner

Vs.

The Assistant Commissioner (ST),
Tuticorin III Assessment Circle,
Office of the TN Commercial Taxes Department,
Tuticorin-628 002.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the impugned orderie. order under Section 74(9), dated 20.07.2023 bearing reference GSTIN No.33AAALZ0205G1ZE/2022-23 passed by the respondent Assistant Commissioner (ST), Tuticorin III and the demands of Tax, Interest,



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

Penalty etc. made therein and quash the same as being wholly without jurisdiction, illegal, arbitrary, in violation of the principles of natural justice and pass such other and further orders as this Court.

For Petitioner : Mr.J.Krishna Srinivasan
in all W.Ps. Senior Counsel
for Mr.Ramasubramanian and
Associates

For Respondent : Mr.R.Suresh Kumar
in all W.Ps. Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the impugned orders issued by the respondent in GSTIN No.33AAALZ0205G1ZE for the assesment years 2017-18; 2018-19; 2019-2020; 2020-21; 2021-22 and 2022-23, dated 20.07.2023, whereby, the petitioner admittedly a processing plant / facility of Nuclear Fuel Complex ("NFC"), Hyderabad has been subject to tax on the alleged services rendered to Nuclear Fuel Complex, Hyderabad.

2.The challenge is primarily on the premise that the activity of the petitioner would fall under Entry 3 of Schedule-II of the Central Goods and Services Act, 2017 ["CGST"] Act or in any view would be covered by Serial



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

No.8 of Notification No.9 of 2017, dated 28.06.2017 and thus any levy of tax on the petitioner would fall foul of Article 265 of the Constitution of India.

3. Before proceeding further, it may be relevant very briefly to set out the activity undertaken by the petitioner as stated in the affidavit filed in support of the writ petition:

"6. The raw material (Zircon Sand) is received by NFC, Hyderabad from M/s.Indian Rare Earths Limited. It is then processed by NFC into frit powder by NFC and sent to the petitioner at Tuticorin, Tamil Nadu for converting into Zirconium Sponge. The Zirconium Sponge is of Nuclear Grade and undergoes several stages of production at NFC, Hyderabad before it is finally converted into Zirconium Tubes. Then, the uranium fuel pellets processed and assembled at NFC are inserted into the Zirconium tubes and converted into nuclear fuel bundles and sent to the various Nuclear Power Reactor Sites of the Nuclear Power Corporation of India Limited across the country."



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

4. Case of the petitioner:

4.1. The Zirconium Complex is part of the Government of India and does not have any existence independent of Government of India. Reliance was placed on the proceedings, dated 12.05.2003 to show that the 500 TPY Zirconium Oxide Plant and 250 TPY Reactor Grade Zirconium Sponge Plants at Pazhayakayal, Tamil Nadu (i.e.,) was set up by Department of Atomic Energy. The President had sanctioned the expenditure for setting up of the above complex / facility / infrastructure. The relevant portion of the proceeding is extracted hereunder:

“OFFICIAL MEMORANDUM:

.....

The undersigned is directed to refer to NFC Note No.NFC/NZOSP/2002 dated 28.09.2002 and subsequent correspondence on the above mentioned subject and to convey the sanction of the President to incur an expenditure of Rs.185.12 Crore (Rupees One Hundred Eighty Five Crore and Twelve Lakh only) (including an expenditure of Rs.11.92 Crore already incurred upto March 2002 under previous approvals) with a foreign exchange component of 4.26 Crores at first quarter 2002 prices for the project “Setting up of 500 TPY Zirconium Oxide Plant and 250 TPY Reactor Grade Zirconium Sponge Plants at Palayakayal, Tamil Nadu”. Break up of the capital cost is given in Annex.I. The project is schedule to be



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

completed within 36 months from the date of this sanction and full protection capacity will be achieved within twelve months thereafter.

.....

The expenditure is debitable to the head of “4861 Capital outlay on Atomic Energy Industries / 60 202 Nuclear Fuel Complex 13” – “Titanium Sponge Project” for which the corresponding grant number for the financial year 2003-2004 is “5 – Atomic Energy”.

(emphasis supplied)

4.2. Emphasis was placed on the fact that the above proceeding was issued by the Department of Atomic Energy. Reliance was also placed on the proceeding, dated 07.12.2006, wherein, it has been set out that this New Zirconium Oxide and Sponge Plant at Pazhayakayal, Tuticorin under the Nuclear Fuel Complex would be known as "ZIRCONIUM COMPLEX", Pazhayakayal. The primary contention of the learned Senior Counsel for the petitioner is that both NFC as well as the Zirconium Complex falls under the Department of Government Atomic Energy. They are mere extensions of the Department of Atomic Energy and do not have an existence independent of Department of Atomic Energy.



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

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4.3 Reliance was also sought to be placed on the order(s) of assessment, wherein, it has been recorded that the Zirconium Complex, Pazhayakayal situated at Tuticorin is a processing plant of a Nuclear Fuel Complex, NFC. The relevant portion of the order(s) of assessment is extracted hereunder:

"Zirconium Complex (ZC), Pazhayakayal situated at Tuticorin, Tamil Nadu is one of the processing plant at Nuclear Fuel Complex (NFC), Hyderabad. The Nuclear Fuel Complex is an industrial organization which comes under Department of atomic energy Commissioner. Zirconium Sponge which is produced at this unit are transferred to Nuclear Fuel Complex, Hyderabad for further processing and the Zirconium Sponge is converted into Zirconium Tubes."

4.4. It may also be relevant to note that the impugned order(s) of assessment has also proceeded to observe that the petitioner is a unit of the Government of India under the control of Nuclear Fuel Complex, Hyderabad:

"The unit is a Government of India Unit under the control of Nuclear Fuel Complex, Hyderabad."

Zirconium Complex (ZC) (Pazhayakayal), Tuticorin is a plant coming under the NFC, Hyderabad. The



fabrication of nuclear fuel involves two processes viz., i) production of nuclear fuel and production of zirconium tubes. The production of zirconium tubes is a complex process involving many stages. ZC, Pazhayakayal is processing only up to zirconium sponge. The zirconium sponge processed at ZC (P) is transferred to NFC, Hyderabad for further processing. The sponges undergo several stages of production before it is converted into zirconium tubes. The fuel pellets are filled into the zirconium tubes and converted into fuel bundles comprising of 37 tubes and tubes each depending on the requirement of NPCIL.

Production of nuclear fuel bundle is a very specialized process done at NFC, Hyderabad. The finished product is the nuclear fuel bundle which is transferred to NPCIL. NFC is the only organization in the works producing Fuel Pellets and Zirconium Tubes under one roof."

(emphasis supplied)

4.5. It was thus submitted by the learned Senior Counsel for the petitioner that the Zirconium Complex is merely a name, given to unit of NFC.

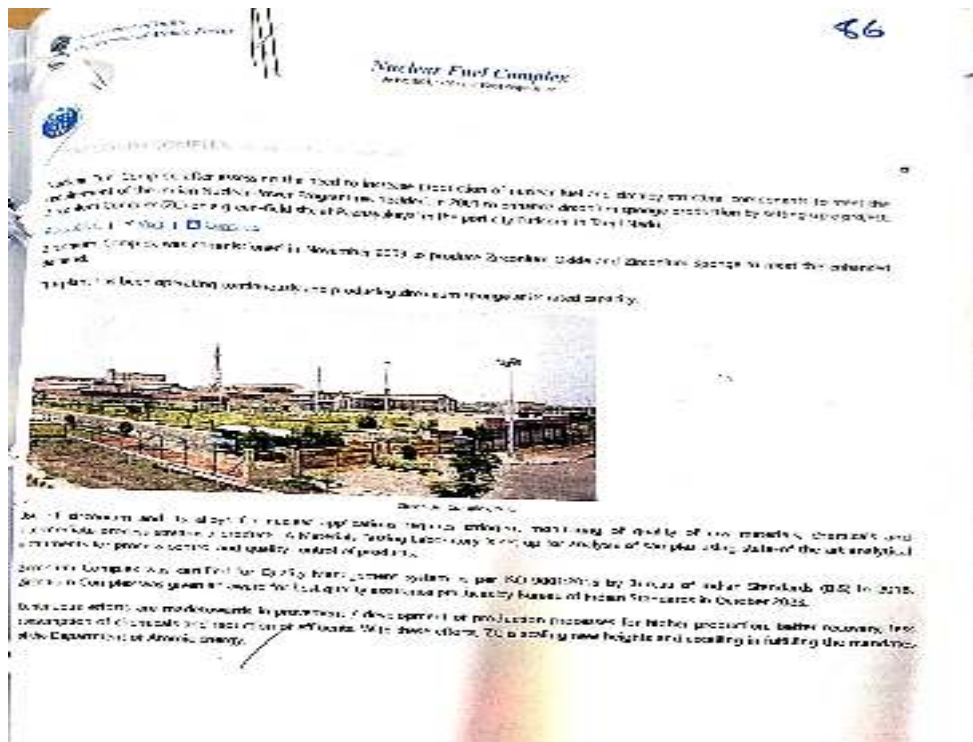
In other words both NFC as well as Zirconium Complex are a part of



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

Department of Atomic Energy.
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The learned Senior Counsel for the petitioner would then place reliance on the website of Nuclear Fuel Complex, the relevant portion of which is extracted hereunder:



4.6. It may also be relevant to note that the Department of Atomic Energy had made a request for exemption and the GST Council has also recorded the Department of Atomic Energy as a Government Department. The relevant portion is extracted hereunder:

*“Minutes of the 21st GST Council Meeting
held on 09 September, 2017*



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

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Agenda item 8(iv): Exemption from GST on the supply of nuclear fuel and heavy water by DAE to NPCIL

8. Other Recommendations of the Fitment Committee

i. Alternative approach for GST Rate Structure for Handicrafts

ii. Compensation Cess on Motor Vehicles

iii. Exemption from GST on the services provided to both international and domestic customers by ANTRIX Corporation Limited from levy of GST

iv. Exemption from GST on the supply of nuclear fuel and heavy water by DAE to NPCIL

v. GST on admission tickets for FIFA Under-17 Football World Cup-2017

.....

41. Introducing this item, the Joint Secretary (TRU-JT), CBEC, stated that the Cabinet (~ Secretariat had forwarded a letter of the Chairman, Atomic Energy Commission and ~ 1 Secretary, Department of Atomic Energy (DAE), requesting to exempt levy of GST on lease of nuclear fuel and heavy water by the DAE to NPCIL (Nuclear Power Corporation of India Limited). He stated that the DAE had justified the proposal for exemption on the ground that the DAE and the NPCIL were related persons as per the definition of "related persons" in Explanation to Section 15 of the CGST Act, 2017 as one of them, directly or indirectly, controlled the other. Therefore, supply of goods and services, even if made without consideration, when made in the course or furtherance of the business, shall attract GST. He further explained that the DAE, being a Government Department was not a tax payer under the GST.



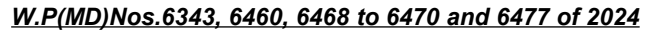
W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

WEB COPY

Act, and the NPCIL, being an assessee under the GST Act, would be required to pay GST on reverse charge basis and file returns under GSTR- 1, GSTR-2 and GSTR-3, and therefore, would capture sensitive details regarding strategic materials used in unsafeguarded reactors, which was a matter of concern to the DAE. He further stated that in the pre-GST regime, heavy water and nuclear fuel did not attract Central Excise Duty vide Serial No. 94 of Tariff Notification No. 12/20 12-CE. He informed that the Fitment Committee had discussed this issue on 5 September, 20 17 and recommended to exempt from GST, supply of heavy water and nuclear fuel by the DAE to the NPCIL. The Council agreed to this proposal. 42. For agenda item 8(iv), the Council approved to exempt from tax supply of heavy water and nuclear fuels (falling in Chapter 28 of the Customs Tariff Act) by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd.

(emphasis supplied)

4.7. The learned Senior counsel for the petitioner would submit that if we keep in mind the fact that the petitioner is a part of the Department of Atomic Energy and then examine the activities performed by the petitioner, he would submit that it would be clear that levy of tax is without authority of law, falling foul of Article 265 of the Constitution of India. It was submitted that the activities of the petitioner would not fall within the purview of GST Act, in support thereof reliance was sought to be placed on Entry 3 of Schedule II of TNGST Act, which reads as under:



[See Section 7]

.....

Any treatment or process which is applied to another person's goods is a supply of services."

4.8. The learned counsel for the petitioner would also submit that in terms of Schedule-II to the CGST Act, any treatment or process which is applied to another person's goods will be treated as supply of services in terms of Entry 3 of Schedule II of CGST Act. In other words, a treatment by different unit of the same entity may not constitute supply. That, in the instant case, there are no two different persons / entities and both NFC as well as Zirconium Complex are mere extensions / units of the Department of the Atomic Energy, Government of India and thus the activity may not even come within the purview of the GST Act.



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4.9. The expression “person” is defined as under Section 2(84) of the CGST Act:

“(84) -person includes—

- (a) an individual;*
- (b) a Hindu Undivided Family;*
- (c) a company;*
- (d) a firm;*
- (e) a Limited Liability Partnership;*
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*
- (h) any body corporate incorporated by or under the laws of a country outside India;*
- (i) a co-operative society registered under any law relating to co-operative societies;*
- (j) a local authority;*
- (k) Central Government or a State Government; (l) society as defined under the Societies Registration Act, 1860; (m) trust; and (n) every artificial juridical person, not falling within any of the above;”*

4.10. It was submitted by the learned Senior Counsel for the petitioner that assuming without conceding that the activity does gets covered under the provisions of the GST Act, in any view, Notification No.9 of 2017, dated 28.06.2017, in particular Entry 8 provides that services provided by the Central Government to another Central Government, State Government, Union Territory or Local Authority would be entitled to exemption. The relevant entry is extracted hereunder:



WEB COPY



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

“Notification No.9/2017-Integrated Tax (Rate)

New Delhi, the 28th June, 2017

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Table

Sl.No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per cent.)	Condition
08.	Chapter 99	<u>Services provided by the Central Government, State Government, Union Territory or Local Authority to another Central Government, State Government, Union Territory or Local Authority:</u> Provided that nothing contained in this entry shall apply to services- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory: (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport: (iii) of transport of goods or passengers.	Nil	Nil



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

WEB COPY

4.11. It was thus submitted by the learned Senior Counsel for the petitioner that the activity which is sought to be taxed by the impugned orders may not fall within the purview of the GST or in any view would be covered by the exemption under Notification No.9 of 2017, dated 28.06.2017. That being the case, levy of taxes would be without authority of law and would fall foul of Article 265 of the Constitution of India.

5. Case of the respondent:

5.1.To the contrary, it was submitted by the learned Additional Government Pleader for the respondent that the case that is now sought to be set out by the petitioner is different from the objections that was submitted by them during the course of assessments, inasmuch as the petitioner vide the reply, dated 13.04.2023, placed reliance on Notification No.26 of 2017, dated 21.09.2017 which covers exemption on supplies of “heavy water” and “nuclear fuel” falling under Chapter 28 of the First Schedule to the Customs Tariff Act, 1975. The above activity inasmuch as it does not fall under Chapter 28 of the First Schedule to the Customs Tariff Act, 1975, was sought to be taxed. It is thus submitted by the learned Additional Government Pleader for the respondent that the petitioner would have to suffer the order for not bringing



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

Notification No.9 of 2017, dated 28.06.2017 to the notice of the Adjudicating Authority. It was further submitted that petitioner and NFC, Hyderabad would constitute distinct person in terms of Section 25(5) of the CGST Act and the activity carried out by the petitioner would constitute supply.

6. In response, it was submitted by the learned counsel for the petitioner that it is trite law that tax proceedings are not adversarial in nature and the object of an assessment is to arrive at the correct tax liability and even assuming that the petitioner had not made a claim for exemption which it was otherwise entitled to by mistake a duty is cast on the Assessing Authority to extend the benefit of exemption.

7. This Court is of the view that there is merit in the submission of the learned Counsel for the petitioner that notification No.9 of 2017, dated 28.06.2017 would get attracted once an assessee or a taxable person is able to demonstrate that it is a service rendered by Central Government to another Central Government or a State Government. The material which has now been placed before this Court is relevant to determine if the petitioner is a unit of NFC complex / which in turn is a part of the Department of Atomic Energy



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

coming under the Central Government. The above aspect would in turn have relevance in determining the applicability of Notification No.9 of 2017, dated 28.06.2017. The Assessing Authority ought to have examined the applicability of Notification No.9 of 2017, dated 28.06.2017 before making the assessments, which it failed to. When this was pointed out, the learned counsel for the respondent would submit that they would redo the assessments.

8. In view thereof, this Court is inclined to set aside the impugned orders in GSTIN No.33AAALZ0205G1ZE for the assesment years 2017-18; 2018-19; 2019-2020; 2020-21; 2021-22 and 2022-23, dated 20.07.2023 and to direct the Assessing Authority to re-do the assessments. The petitioner would submit its replies within a period of 2 weeks from the date of receipt of copy of this order treating the impugned orders as Show cause notices. If such replies are filed within the stipulated period i.e., 2 weeks from the date of receipt of copy of this order, those shall be entertained in accordance with law after affording the petitioner a reasonable opportunity of hearing. If such replies are not filed within the stipulated time i.e., 2 weeks from the date of receipt of copy of this order, the impugned orders shall stand restored.



W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

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9. These writ petitions stand disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

16.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Assistant Commissioner (ST),
Tuticorin III Assessment Circle,
Office of the TN Commercial Taxes Department,
Tuticorin-628 002.



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W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)Nos.6343, 6460, 6468 to 6470 and 6477 of 2024

16.10.2024