IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.9367, 9372, 9376, 9379 of 2021
and
W.M.P. Nos.9952, 9954, 9957, 9958, 9960,
9961, 9966 and 9967 of 2021

1.K.T.R.C.Ramalingam
Trading as K.T.R. Modern Rice Mill ... Petitioner in all Writ Petitions

Vs.

1.The Jurisdictional Commissioner
Central GST, Chennai.

2.The State Tax Officer,
Polur, Tiruvannamalai District. ... Respondents in all Writ Petitions

PRAYER in W.P.No.9367 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned assessment order dated 05.03.2021 bearing reference No.GSTIN:33APNPR6535F1ZN/2018-19 passed by the 2nd Respondent and to quash the same as arbitrary, unconstitutional and against law and consequently direct the 2nd Respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 10.02.2021.

PRAYER in W.P.No.9372 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned assessment order dated 05.03.2021 bearing reference No.GSTIN:33APNPR6535F1ZN/2020-21 passed by the 2nd Respondent and to quash the same as arbitrary, unconstitutional and against law and consequently direct the 2nd Respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 10.02.2021.

PRAYER in W.P.No.9376 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned assessment order dated 05.03.2021 bearing reference No.GSTIN:33APNPR6535F1ZN/2017-18 passed by the 2nd Respondent and to quash the same as arbitrary, unconstitutional and against law and consequently direct the 2nd Respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 10.02.2021.

PRAYER in W.P.No.9379 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned assessment order dated 05.03.2021 bearing reference No.GSTIN:33APNPR6535F1ZN/2019-20 passed by the 2nd Respondent and to quash the same as arbitrary, unconstitutional and against law and consequently direct the 2nd Respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 10.02.2021.

For Petitioner in all W.Ps.	: Mr.A.K.Rajaraman
For Respondents in all W.Ps.	: Mr.C.Harsha Raj Additional Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the impugned assessment orders dated 05.03.2021 passed by the 2nd Respondent for the period 2017-18, 2018-19, 2019-20 and 2020-21 and to quash the same as arbitrary, unconstitutional and against law and consequently direct the 2nd Respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 10.02.2021.

2. The petitioner was running a modern rice mill at Kalambur Village located at Tiruvannamalai District in the name and style of K.T.R. Modern Rice Mill. Originally the petitioner's father viz., K.T.R. Chandru started the business of modern rice mill in the year 1998. The petitioner's father died on 20.07.2011. The petitioner continued to run the mill after his father's demise. It may be relevant to note that the Petitioner's father had submitted his application dated 18.09.2007 for registration of the word mark "K.T.R" under the Trade Marks Act "for rice". The above registration was valid upto 18.09.2017, with an option to renew the said registration renewed for a further period of 10 years on receipt of an application in Form TM – 12 subject to the complying with the other conditions for renewal.

3. With the introduction of GST, the petitioner obtained a registration under the GST Act and filed the returns regularly. The sale of rice was

treated by the Assessing Authority as "supply" falling under Entry 51 Chapter Heading 1006 of I Schedule to Central General Goods and Services Tax Act, 2017, notified by the Central Government in exercise of its power under sub-section (1) of Section 9 of the CGST Act. The above entry was amended *vide* Notification No.27 of 2017- Central Tax (Rate) on 22.09.2017 whereby an exclusion was carved out of the said Entry in respect of supply of rice put up in a unit container and bearing a brand name on which an actionable claim or enforceable right in respect of such brand name has been voluntarily forgone subject to complying with the other conditions set out in the said Notification No.27 of 2017.

4. The petitioner claimed the benefit of the exclusion under the said notification viz.,No.27 of 2017 on the premise that he had complied with the requirements of the said notification and thus the sale of rice put up in a unit container is exempt. It was also submitted that the petitioner they had sold rice in truck loads without either being putup in unit containers or bearing a brand name and the above supplies would not in any view be governed by Entry 51 Chapter Heading 1006 of I Schedule of CGST. The petitioner

would submit that though they had filed an affidavit as provided under Notification No.27 of 2017 on 06.01.2020 nevertheless they would be entitled to the benefit of exemption ever the inception of GST. It was further submitted that the impugned orders have been passed without considering the fact that the petitioner had filed an affidavit as provided under Notification No.27 of 2017.

5. To the contrary, it was submitted by the learned counsel for the Respondent that there is no dispute of the fact that the rice sold by the petitioner was under a brand name and the claim of exemption is on the strength of the Notification No.27 of 2017. While, rice put up in unit containers bearing a registered brand name or a brand name on which a actionable claim or enforceable right in a court of law is available would be liable to tax at 2.5% of the CGST in terms of Entry 51 Chapter Heading 1006 of I Schedule. It was submitted that the above entry was amended vide Notification No.27/17 which excludes supply of rice bearing a brand name on which an actionable claim or enforceable right has been voluntarily foregone subject to the condition set out in the notification which *inter alia*

requires filing an affidavit as provided in the Annexure to Notification No.27/17. Any claim to the benefit of Notification No.27/17 can only be subsequent to the compliance of the conditions contained in the above notification which *inter alia* includes filing an affidavit as provided in the Annexure to the Notification No.27/17. Thus, the case of the petitioner that the assessing authority had passed the orders of assessment without considering the affidavit would not be available to the petitioner for the period 2017-18, 2018-19 and 2019-20 (until 06.01.2020).

6. Heard both sides perused the materials available on record.

7. Before proceeding further it may be relevant to refer to the following Entries under the Tariff:

Schedule I - 2.5%

S.No.	***Chapter/Heading/ Sub-Heading/Tariff Item***	***Description of Goods***
51.	1006	Rice put up in unit container and bearing a registered brand name.

S.No.	***Chapter/Heading/ Sub-Heading/Tariff Item***	***Description of Goods***
51	1006	**Nil –** Rice other than those put up in unit container and bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in Annexure I to the Notification No.2/2017 – C.T. (Rate) dated 28.06.2017.

Annexure

For the foregoing an actionable claim or enforceable right on a brand name;-

(a) the person undertaking packing of such goods in unit containers which bear a brand name shall file an affidavit to that effect with the jurisdictional commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name in Explanation (ii) (a); and

(b) the person undertaking packing of such goods in unit containers which bears a brand name shall, on each unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii)(a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.”

8. On a reading of the above entries and notification the following position would emerge:

Rice put up in the unit container and bearing a registered brand name was originally liable to tax at 2.5% of tax in terms of Entry 1006 of Schedule I to CGST Act, 2017. Entry 1006 was amended *vide* Notification No. 27/2017 dated 22.09.2017 and would cover rice put up in unit containers and bearing a registered brand name (or) bearing a brand name on which an actionable claim or enforceable right in a court of law is available. It further provides that rice put in container bearing a brand name on which an actionable or enforceable right in a Court of law is available would stand excluded from the scope of the above Entry 51 subject to complying with the conditions set out in Notification No.27/2017. The prerequisite/condition precedent for claiming the benefit of Notification No. 27/2017 *inter alia* requires that the person undertaking packing of such goods in unit containers which bears a brand name shall file an affidavit with the Jurisdiction Commissioner to that effect that he is voluntarily foregoing his actionable claim or enforceable right on such brand name and person undertaking packing of such goods in unit containers which bears a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii) (a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily as provided in the Annexure to Notification No.27 of 2017.

9. This Court finds that the submission of the petitioner that once an affidavit is filed, the petitioner would be entitled to claim exemption from the inception of GST i.e., 01.07.2017 is without basis. From the facts narrated above it would be clear that K.T.R. is a brand name which was registered until 18.09.2017, however, its registration was not renewed. The non-renewal of the registration under the Trade Marks Act would not have any bearing on the petitioner's right to claim remedy in the event of infringement of the petitioner's trade mark under common law. The rice put up in unit container and bearing the brand name K.T.R. is a brand name on which an actionable claim or enforceable right is available in a court of law.

10. The very fact that an affidavit is filed foregoing actionable claim or enforceable right on such brand name is indicative of the fact that the petitioner has understood that the supply of rice made by him was under a brand name. Thus benefit under the above Notification No.27/17 being subject to complying with the above condition, can only be from the date of compliance with conditions/requirements set out in the said notification which includes filing of the affidavit referred to above and not prior thereto. It is trite law that when a benefit is hedged by condition, the same must be strictly complied with. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

a. *Commissioner of Customs vs. Dilip Kumar and Company (2018) 9 SCC 1:*

> *"66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification"*

b. *Krishi Upaj Mandi Samiti v. CCE & Service Tax, (2022) 5 SCC 62 at page 68:*

> ***"8.*** *The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.*

8.1. *It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.*

8.2. *The exemption notification should be strictly construed and given a meaning according to legislative intendment. The statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions."*

c. <u>Checkmate Services (P) Ltd. v. CIT, (2023) 6 SCC 451 at page 480:</u>

"55. *One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain conditions, the conditions are to be strictly complied with. [See e.g., Eagle Flask Industries Ltd. v. CCE, (2004) 7 SCC 377] This rule is in line with the general principle that taxing statutes are to be construed strictly, and that there is no room for equitable considerations.*

56. *That deductions are to be granted only when the conditions which govern them are strictly complied with. This has been laid down in State of Jharkhand v. Ambay Cements [State of Jharkhand v. Ambay Cements, (2005) 1 SCC 368] as follows : (SCC p. 378, paras 23-26)*

24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications."

10.1. The above view is reiterated / reaffirmed in a number of judgments, such as CIT v. Ace Multi Axes Systems Ltd. [CIT v. Ace Multi Axes Systems Ltd., (2018) 2 SCC 158]

11. The submission of the petitioner that once an affidavit in terms of Notification No.27/17 is filed, it entitles them to claim exemption from the inception of GST is obnoxious and would produce absurd results, apart from rendering the condition in the notification superfluous and redundant. This would be clear from the following illustration:

Taxable person A files an Affidavit on 01.01.2019.

Taxable person B files an Affidavit on 01.01.2020.

11.1. If the submission of the petitioner is to be accepted, it would result in both A and B being entitled to the benefit from 01.07.2017 thereby producing results which are obnoxious and ought to be rejected inasmuch as it results in treating unequals equally thereby offending Article 14 of the Constitution of India.

12. The learned counsel for the petitioner would thereafter submit that yet another reason why the impugned orders is bad is in view of the fact that there have been instances where rice was sold on truck loads and without being packed in any container and would thus not be covered under Entry 1006 of Schedule I of GST Tariff.

13. To a pointed question as to whether any such case/ objection was set up before the assessing authority, the learned counsel for the petitioner would submit that they were under the impression that once an affidavit was filed in terms of Notification No.27 of 2017 it would relate back to the the very inception of GST and thus did not put forth the above argument. The above submission being essentially one of fact. I do not propose to deal with the said contention, inasmuch as whether a particular supply was effected in containers bearing brand name in terms of Entry 51 of Schedule I of the Central Goods and Services Tax Act, 2017 or otherwise is a matter which needs to be examined by the statutory authorities as it is essentially a question of fact. I would think that the above exercise must necessarily be carried out by the statutory authorities and cannot be the subject matter of

examination under Article 226 of the Constitution of India.

14. Before parting it is made clear that I had only examined the scope of Notification No. 27/2017 which is a pure question of law involving interpretation of the said notification and with regard to which arguments were advanced by both the learned counsel for the petitioner as well as the respondent. From the above discussion it is made clear that the petitioner can claim the benefit of Notification No. 27/2017 only from the date of filing the affidavit in compliance with the said notification and not prior thereto. I am not expressing any view as to whether the affidavit filed by the petitioner is in compliance with the requirement of the said notification, which shall be determined by the statutory authorities. Secondly, the case of the petitioner that sale of the rice effected in trucks load requires investigation of question of fact which is alien to jurisdiction under Article 226 of the Constitution of India and this ought to be examined by the statutory authorities.

15. It is open to the petitioner to file an appeal, if any such appeal(s) is filed within a period of 4 weeks from the date of receipt of a copy of this order, and in compliance with the other requirement, the appeal(s) shall be entertained without reference to limitation and orders passed on merits after providing the petitioner opportunity in accordance with law, keeping in mind the views expressed supra as regards the scope of Notification No. 27/2017. The writ petitions stand disposed of accordingly. No costs. Consequently, connected writ miscellaneous petitions are closed.

24.07.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:
1.The Jurisdictional Commissioner
Central GST, Chennai.

2.The State Tax Officer,
Polur, Tiruvannamalai District.

MOHAMMED SHAFFIQ, J.

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