IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.10.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No.24968 of 2022
and WMP No.23907 of 2022

Southern Agrifurane Industries (P) Ltd.,
Rep.by President (Finance) D R Augustine Paulraj
MGM Centre, No.1, 9th Street,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004. ... Petitioner

vs.

1. The Additional Chief Secretary / Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk,
Chennai – 600 005.

2. Assistant Commissioner of Commercial Taxes,
Villupuram – I,
No.27/11, VOC Street,
Villupuram – 605 602. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in letter No.PP1/13136/2020, dated 30.03.2022 issued by the 1st respondent and to and quash the same as arbitrary and illegal and further to direct the 1st respondent to allow the petitioner to issue/generate the 1st respondent to allow the petitioner to generate Form "C" declaration under the Central Sales Tax Act, 1956 for their purchase of Extra Neutral Alcohol effected from outside the State of Tamil Nadu.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.Haja Nazirudeen
Additional Advocate General
Asst. by Mr.M.Venkadeswaran
Special Govt. Pleader (Tax)

ORDER

This writ petition has been filed for issuance of writ of certiorarified mandamus calling for the records in letter No.PP1/13136/2020, dated 30.03.2022 issued by the 1st respondent and to and quash the same as arbitrary and illegal and further to direct the 1st respondent to allow the petitioner to issue/generate the 1st respondent to allow the petitioner to generate Form "C" declaration under the Central Sales Tax Act, 1956 for their purchase of Extra Neutral Alcohol (ENA) effected from outside the State of Tamil Nadu.

2. The case of the petitioner is that they are engaged in manufacture of Alcoholic Liquor in their factory at Vazhudareddy Village, Villupuram. The primary input required for manufacture of Alcoholic Liquor is Extra Neutral Alcohol (ENA). It is the contention of the petitioner that they have procured ENA from various suppliers

located in other states who have supplied ENA by charging CST @ 2% against Form 'C' . Prior to introduction of GST (before July, 1 2017), these suppliers had effected sale to the petitioner against Form 'C' by charging CST @ 2% and the petitioner had all along furnished Form 'C' to all these suppliers. He would further contend that the petitioner could not upload the purchase of ENA after July 1, 2017 when GST was introduced. When the petitioner enquired about the difficulty in this regard, he was given to understand that upon introduction of GST w.e.f. July 1, 2017, Code No.302, *inter alia,* pertaining to ENA has been blocked by the respondent department. Thus, the petitioner could not report the inter state purchase of ENA made from July 1, 2017 onwards and also unable to report the purchase of ENA made from July 2017 till date. The consequence of blocking Code No.302 and non-reporting of purchase of ENA is that the petitioner is unable to generate Form 'C' for issuing these forms to suppliers of ENA for purchases made from July 2017 till date.

3(i) Mr.Joseph Prabakar, learned counsel appearing for the petitioner submitted that the GST Council has discussed the present issue of applicability of GST on Extra Neutral Alcohol (ENA) in its 20th

Meeting held on 05.08.2017, 31st GST Council Meeting held on 22.12.2018 and again in 43rd GST Council Meeting held on 28.05.2021 as to who has the power to levy tax on supply of ENA, whether Union of India or the States. However, in all these meetings, the GST Council could not take a final decision on the issue and the Council decided to defer the decision and concluded that status quo should continue. Therefore, he contended that in these circumstances, the respondent department should not decline to issue of Form 'C', since the petitioner is required to prove that the declaration in Form 'C' has been furnished to the selling dealers in terms of Section 8 of the CST Act, 1956 and on failure to do so, the petitioner would face penal consequences.

3(ii) The learned counsel further contended that in the case of an inter state sale, even before determining whether the buyer has issued Form 'C' declaration correctly or not, it would be the responsibility and obligation of the selling dealer to charge the correct tax and the correct rate of tax. Even assuming that ENA should be subjected to GST and not CST, still that question would primarily arise in the origin state and the said issue has to be examined by the department in the origin state and from the perspective of the selling dealer in the other State. He further contended that in the recent GST Council Meeting held on 07.10.2023, a decision was taken to keep the ENA from outside the purview of GST. The recommendations of 52nd GST Council Meeting held on 07.10.2023 reads as follows -

II. Other changes relating to Goods

> *(i) GST Council recommended to keep Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption outside GST. Law Committee will examine suitable amendment in law to exclude ENA for use in manufacture of alcoholic liquors for human consumption from ambit of GST.*

Therefore, he would submit that since this conclusion is not even decided till date, the petitioner has come up before this Court by filing this writ petition.

4. On the other hand, Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Mr.M.Venkadeswaran, Special Government Pleaader (Taxes) appearing for the respondents would contend that as far as the State is concerned, they will not have any

power to issue notification to ensure the ENA in the State. That apart, he fairly submitted that no decision has been taken by the GST Council, i.e. till the date of filing of the writ petition, either to include or exclude the ENA from the purview of GST. He also concurred with the submission of the learned counsel for the petitioner with regard to the stand of the Government of Tamilnadu expressed by the Member of the State, in its 43rd GST Council Meeting held on 28.05.2021 which is recorded in the Minutes of the Meeting in Clause 17.15 wherein the Member of the Tamil Nadu State expressed that "if ENA was kept outside the purview of GST, the State will lose. However, it is stated that in solidarity with fellow states and for state's rights, they would prefer that it was kept out of GST and left to states". Therefore, the stand of the State is to keep the ENA outside the purview of GST and prayed this Court to pass appropriate orders.

5. Heard the learned counsel appearing for the petitioner as well as the Additional Advocate General appearing for the respondents and perused the materials on record.

6. I have given due consideration for the submissions made by

both the learned counsel for the petitioner as well as learned Additional Advocate General appearing for the respondent. It is not in dispute that no decision has been taken by the GST Council till date with regard to inclusion of ENA within the purview of GST. Upon filing of writ petition, the GST Council had elaborate discussion on the aspect of inclusion or exclusion of ENA from the purview of GST at its 43rd Meeting held on 28.05.2021 wherein the Tamil Nadu Government also expressed its view as one of the Members of the State and stated that they are net importers of ENA and the State will lose "if ENA is kept outside the purview of GST. However, in solidarity with fellow states and for state's rights, they would prefer that it was kept out of GST and left the same to to the States". After this stand, in the recent 52nd Meeting of the GST Council held on 07.10.2023, a decision was taken wherein to keep the ENA outside the purview of GST.

7. In such view of the matter, the product supplier of ENA have been following the Central Sales Tax Act and have paid the tax accordingly. In the present case, the petitioner's supplier also paid the tax under the CST Act and their assessment have been pending for the reason that they have not furnished Form 'C' by the petitioner due to the

reason that the respondents have blocked the portal. As contended by the learned Additional Advocate General, the fact remains that no decision has been taken by the GST Council with regard to whether ENA has to be included in the CST regime or excluded. All the States have been consistently following CST and taxes also been paid accordingly.

8. In view of the fact that in the recent 52nd GST Council Meeting held on 07.10.2023, a decision was taken to keep the ENA used for manufacture of alcoholic liquor for human consumption to keep the same outside the purview of GST, this Court is of the considered view that it would be appropriate to direct the respondents to issue Form 'C' from 01.07.2017 to till date for all the purchases made by the petitioner from outside the State or inside the State and further, this Court also directs the respondent to keep open the web portal for the ENA commodity, so that the petitioner can upload the purchases of ENA alongwith 'C' Form etc. It is made clear that the State shall issue Form 'C' for the purchases made from the other states until the Law Committee issues suitable amendment in law to exclude ENA for use in manufacture of alcoholic liquors for human consumption from the ambit of GST, as per the decision taken in the 52nd GST Council Meeting held on

07.10.2023. Further, in the event of the web portal is not opened, the petitioner is directed to file relevant forms/applications manually in which case, the respondents are directed to consider the same and issue the Form 'C'.

9. With the above observation, this writ petition is disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

18.10.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

To

1. The Additional Chief Secretary /
Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk,
Chennai – 600 005.

2. Assistant Commissioner of Commercial Taxes,
Villupuram – I,
No.27/11, VOC Street,
Villupuram – 605 602.

KRISHNAN RAMASAMY, J.

rgr

W.P. No.24968 of 2022

18.10.2023