



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.6485 to 6492 of 2023

and

W.M.P(MD)Nos. 6131, 6140, 6141, 6143, 6144 & 6147 of 2023

W.P.(MD)No.6485 of 2023

M/s. Veeram Natural Products,
Represented by its Partner V.A.Kodiswaran

... Petitioner

Vs.

1. The Commissioner of GST and Central Excise,
Central Revenue Building,
No. 4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002.

2. The Additional Commissioner of
GST and Central Excise (Appeals),
Coimbatore Circuit Office at Central Revenue Building,
No. 4, Lal Bahadur Shastri Road,
Bibikulam, Madurai-625

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for
issuance of *Writ of Certiorarified Mandamus*, to call for the records relating to



WEB COPY

the impugned order No. 13/2020, dated 28.10.2020 being one among the common orders bearing no. 13-19/2020 passed by the 2nd respondent and quash the same and direct the 2nd respondent to pass orders on merits duly following Judicial discipline.

In all Writ Petitions:

For Petitioner : M/s.S.Jaikumar
For Respondents : Mr.R.Nandakumar,
Senior Standing Counsel, assisted by
M/s.S.Ragavendree,
Junior Standing Counsel

COMMON ORDER

Since the issue involved in these Writ Petitions are similar in nature, all the writ petitions are taken up together and disposed of by a Common order.

2. These writ petitions have been filed to quash the impugned order passed by the 2nd respondent and consequently to direct to the 2nd respondent to pass orders on merits duly following “Judicial Discipline”.

3. Heard M/s.S.Jaikumar, the Learned counsel appearing on the petitioners, Mr.R.Nandakumar, the Learned Senior Standing Counsel, assisted by



WEB COPY

M/s.S.Ragavendree, the Learned Junior Standing Counsel, appearing on the respondents and perused the material documents available on record.

4. The petitioner is a partnership firm engaged in the manufacture and supply of Aluminium Foil Container / Aluminium Foil in Roll Form and Plastic Articles. The petitioner is registered under GSTN 33AAEFV1540J1ZC. The petitioner undertakes its manufacturing activities from factories located in Sivakasi and Virudhunagar. Prior to GST regime the said product was taxable under Central Excise Law and the product was classified Aluminium Foil Container under Chapter heading 7607 and levied duty @ 12.5%. Subsequent to the GST regime the petitioner classified under 7615 with 12% tax. But the revenue is claiming the product would come under 7607 with 18% tax. Hence there was a dispute in classification, whether it has to be classified are 7067 or 7615.

5. The Learned Counsel appearing for the petitioner submitted that under GST the taxable event to levy is “supply” of goods and service or both. Section 7 and 9 of GST Act, 2017 as amended govern the scope of supply and



WEB COPY

levy of tax. Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 as amended prescribe rate of Central Tax to be levied on intra-state supply of specified goods with reference to its chapter headings. In GST regime for purpose of classification of specified goods Customs Tariff Act is being followed. Hence the nature of goods and purpose of which such goods are supplied would be the basis for determining the classification of goods. In the present case, since the Aluminium Foil Container is supplied by the petitioner unit are used for packing / serving the food stuff, the petitioner had classified under 7615. But the revenue has classified it under 7607 as “Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm)”.

6. The petitioner submitted before the authorities that the issue is no longer res integra since the issued is decided by the Ahmedabad Tribunal in the case of Hindalco Industries Limited Vs. CCE reported in 2009 (237) ELT 588. The Tribunal had relied on the opinion of the World Customs Organisation, which in turn had relied on the decision taken by the Harmonized System Committee and the decision of Supreme Court of South Africa, Tribunal which had classified



WEB COPY

the Aluminium Foil Containers as 7615. But the respondents declined to consider the classification under 7615 based on the judgment of the Tribunals and the opinion cited supra and held that the same is not binding precedent. And proceeded to pass the order-in-original dated 24.09.2018. Aggrieved over the petitioner had preferred an appeal and the appellate authority vide order dated 28.10.2020 had confirmed the order-in-original and also held the said order passed in Tribunal is not binding precedent.

7. Now, the issue is considered by the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Hindalco Industries Limited vide judgment dated 08.02.2023 in Civil Appeal No.7561 of 2009 reported in 2023 Centax 132 (S.C.), has held that the said product is classifiable under 7615. The relevant portion of the judgment is extracted hereunder:

....

“The question which the revenue seeks to urge in these appeals are as to the true classification of Aluminium casseroles manufacture with the aid of Aluminium foils by the revenue. The revenue contended that the products are



WEB COPY



“containers”, falling in Chapter Heading 7612 whereas the assessee-respondent contended that these casseroles were properly classifiable as Aluminium trays.

After hearing leaned counsel for the parties and having considered the order of the CESTAT, this Court is of the opinion that the view expressed by the Tribunal is correct. On a application of the common parlance test also having regard to the use of the products, (i.e. storing articles of food) and the explanatory note to the HSN, there can be no conclusion other than that arrived at by the CESTAT i.e. the goods are classifiable under heading 7615.

The appeals are, therefore dismissed.”

8. And the issue raised by the petitioner is settled by the Hon'ble Supreme Court in favour of the petitioner and against revenue. Therefore, this Court is of the considered opinion that the product Aluminium Foil Container is classifiable under 7615 with GST 12%. Hence the impugned order is liable to be quashed and accordingly quashed.

9. However, the petitioner has already paid tax for the month of July 2017 to November 2017 at 18%, which is accumulated credit available to the



WEB COPY

petitioner. However, this Court is not inclined to decide the refund issue, since it has to be considered on various factors. The refund is left open between the parties and the same shall be adjudicated as per Provisions of Law.

10. With these observations and directions, these writ petitions are allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

13.09.2023

To

1. The State Tax Officer (Intelligence),
Adjudication -1/Group-IV,
O/o.the Deputy Commissioner (ST),
Commercial Taxes Building,
Dr. Thangaraj Salai,
K.K.Nagar,
Madurai-625020.
2. The Assistant Commissioner of GST and Central Excise,
Office of the Commissioner of Central Excise,
Bibikulam,
Madurai.



WEB COPY



S.SRIMATHY, J

ksa

**Common Order made in
W.P.(MD)Nos.6485 to 6492 of 2023**

13.09.2023