BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17355 of 2024
and
W.M.P.(MD)No.14917 of 2024

Super Seafood Products Private Limited,
Represented by its Managing Director R.Venkatesh. ... Petitioner

Vs.

The Additional Commissioner of GST and Central Excise,
O/o the Additional Commissioner of GST & Central Excise,
No.7, Tractor Road, NGO. 'A' Colony,
Tirunelveli – 627 007. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records in Order-in-Original No. 28/ADC/GST/2023-24 dated 25.03.2024 DIN 20240359X0000001060F passed by the respondent and to quash the same as arbitrary and illegal.

For petitioner : Mr.Joseph Prabakar

For respondent : Mr.R.Nanda Kumar
Senior Standing Counsel

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ORDER

Heard learned counsel for the petitioner and learned Senior Standing Counsel for the respondent.

2. This Writ Petition is disposed of at the time of admission after dispensing with the counter from the respondent as no adverse orders are proposed to be passed either against the petitioner or against the respondent.

3. The petitioner is before this Court against the impugned order dated 25.03.2024 in Order-in-Original No.28/ADC/GST/2023-24 DIN-20240359XO000001060F bearing reference in GEXCOM/ADJN/JC/472/2023.

4. By the impugned order, the respondent has confirmed the demand proposed in the show cause notice that preceded the impugned order for a period between October 2021 to March 2023. Relevant portion of the impugned order reads as under:

ORDER

A) In respect of Central Goods and Service Tax:

(i) I confirm the demand of **Rs.1,69,59,219/- (Rupees One Crore Sixty Nine Lakh Fifty Nine Thousand Two Hundred Nineteen only)** payable on the supply of "Fish Meal" during the period from October, 2021 to March, 2023 under Section 73(9) of the CGST Act, 2017;

(ii) I demand interest at applicable rates on the amount demanded at Sl. No. (i) above, under Section 73 read with section 50(1) of CGST Act, 2017; and

(iii) I impose penalty of **Rs.16,95,922/- (Rupees Sixteen Lakh Ninety Five Thousand Nine Hundred Twenty Two only)** under Section 73 read with 122(2)(a) of CGST Act, 2017, for claiming ineligible exemption on their taxable supply resulting in non-payment of tax.

B. In respect of Tamil Nadu Goods and Service Tax:

(i) I confirm the demand of **Rs.1,69,59,219/- (Rupees One Crore Sixty Nine Lakh Fifty Nine Thousand Two Hundred Nineteen only)** payable on the supply of "Fish Meal" during the period from October, 2021 to March, 2023 under Section 73(9) of the TNGST Act, 2017;

(ii) I demand interest at applicable rates on the amount demanded at Sl. No. (i) above, under Section 73 read with section 50(1) of TNGST Act, 2017; and

(iii) I impose penalty of **Rs.16,95,922/- (Rupees Sixteen Lakh Ninety Five Thousand Nine Hundred Twenty Two only)** under Section 73 read with 122(2)(a) of TNGST Act, 2017, for claiming ineligible exemption on their taxable supply resulting in non-payment of tax.

5. It is noticed that the issue that arises for consideration is purely on account of the classification of the 'Fish Meal'. The issue is now subjudiced before the Hon'ble Supreme Court. Under the similar circumstances, this Court has allowed the Writ Petition in ***W.P.(MD)Nos.14068, 14069, 14220 and 14253 of 2023 in the case of Rehoboth Fish Meal and Oil Plant vs. Additional Commissioner, Tirunelveli*** by directing the petitioners therein to file statutory appeal before the Appellate Authority without pre-deposit *vide* order dated 02.07.2024.

6. Since the matter subjudiced before the Hon'ble Supreme Court, I do not wish to take a different view.

7. In view of the above, this Writ Petition is disposed of by permitting the petitioner to file statutory appeal before the Appellate Authority/the Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai, without pre-deposit of 10%. This appeal shall be filed within a period of 30 days from the date of receipt of a copy of this order. The Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai shall await for the orders of the

Hon'ble Supreme Court as ordered in ***Rehoboth Fish Meal and Oil Plant***'s case (cited supra) and disposed of the proposed appeal of the petitioner against the impugned order.

8. This Writ Petition is disposed of with above directions. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd

26.07.2024

To

The Additional Commissioner of GST and Central Excise,
O/o the Additional Commissioner of GST & Central Excise,
No.7, Tractor Road, NGO. 'A' Colony,
Tirunelveli – 627 007.

C.SARAVANAN, J.

apd

W.P.(MD) No.17355 of 2024

26.07.2024