BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17101 of 2024
and
W.M.P.(MD)No.14719 of 2024

Hameed Marine Private Limited,
Represented by its Designated partner. ... Petitioner

Vs.

The Additional Commissioner,
O/o the Commissioner of CGST & 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 the proceedings of the respondent in Order-in-Original No.10/ADC/GST/2024-25 dated 17.05.2024 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-in-Original No.10/ADC/GST/2024-25 dated dated 17.05.2024 bearing reference in GEXCOM/ADJN/GST/ADC/212/2024.

4. By the impugned order, the respondent has confirmed the demand proposed in the show cause notice that preceded the impugned order. Operative portion of the impugned order reads as under:

ORDER

61.1

A. In respect of Integrated Goods and Service Tax:

(i) I confirm an amount of **Rs.7,60,19,881/- (Rupees Seven Crore Sixty lakh Nineteen thousand Eight hundred Eighty One only)** payable on the supply of "Fish Meal" during the period from October 2019 to September 2023, under Section 20 of the IGST Act, 2017 read with 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 20 of the IGST Act, 2017 read with Section 73 of CGST Act, 2017 and section 50 of CGST Act, 2017; and

(iii) I impose a penalty of **Rs.76,01,988/- (Rupees Seventy Six Lakh One Thousand Nine Hundred Eighty Eight only)** should under Section 73(9) of the CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017.

B. In respect of Central Goods and Service Tax:

(i) I confirm an amount of **Rs.97,65,316/- (Rupees Ninety Seven Lakh Sixty Five Thousand Three Hundred Sixteen only)** payable on the supply of "Fish Meal" during the period from October 2019 to September 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 of CGST Act, 2017 read with section 50 of CGST Act, 2017; and

(iii) I impose a penalty of **Rs.9,76,532/- (Rupees Nine Lakh Seventy Six Thousand Five Hundred Thirty Two only)** under Section 73(9) of the CGST Act, 2017 read with Sec. 122(2)(a) of the CGST Act, 2017.

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

(i) I confirm an amount of **Rs.97,65,316/- (Rupees Ninety Seven Lakh Sixty Five Thousand Three Hundred Sixteen only)** payable on the supply of "Fish Meal" during the period from October 2019 to September 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 of TNGST Act, 2017 read with section 50 of TNGST Act, 2017; and

(iii) I impose a penalty of **Rs.9,76,532/- (Rupees Nine Lakh Seventy Six Thousand Five Hundred Thirty Two only)** under Section 73(9) of the TNGST Act. 2017 read with Sec. 122(2)(a) of the TNGST Act, 2017.

6. 3

A. In respect of Integrated Goods and Service tax:

(i) I drop an amount of **Rs.94,04,811/- (Rupees Ninety Four Lakh Four Thousand Eight Hundred Eleven only)** payable on the supply of Fish Soluble Paste, during the period from July 2017 to September 2019 as exemption was provided for the same;

(ii) I confirm an amount of **Rs.1,20,08,389/- (Rupees One Crore Twenty Lakh Eight Thousand Three Hundred Eighty Nine only)** payable on the supply of Fish Oil, Fish Soluble Paste, availment of ineligible ITC as blocked credit and non-reversal of ITC under Rule 42 & 43 during the period from July 2017 to September 2023, under Section 20 of the IGST Act, 2017 read with Section 74(9) of the CGST Act. 2017;

(iii) I appropriate an amount of **Rs.69,503/- (Rupees Sixty Nine Thousand Five Hundred Three only)** against the demand confirmed at Sl. No. (ii);

(iv) I demand interest at applicable rates on the amount demanded at Sl. No. (ii) above, under Section 20 of the IGST Act, 2017 read with Section 74 of CGST Act, 2017 and Section 50 of CGST Act, 2017;

(v) I impose a penalty of **Rs.1,20,08,389/- (Rupees One Crore Twenty Lakh Eight Thousand Three Hundred Eighty Nine only)** under Section 20 of the IGST Act, 2017 read with Section 74(9) of the CGST Act, 2017 and Sec. 122(2)(b) of the CGST Act, 2017.

B. In respect of Central Goods and Service Tax:

(i) I drop an amount of **Rs.24,00,916/- (Rupees Twenty Four Lakh Nine Hundred Sixteen only)** payable on the supply of Fish Soluble Paste, during the period from July 2017 to September 2019 as exemption was provided for the same;

(ii) I confirm an amount of **Rs.1,22,89,554/- (Rupees One Crore Twenty Two Lakh Eighty Nine Thousand Five Hundred Fifty Four only)** payable on the supply of Fish Oil, Fish Soluble Paste, availment of ineligible ITC & blocked credit and non-reversal of ITC under Rule 42 & 43 during the period from July 2017 to September 2023, under Section 74(9) of the CGST Act, 2017;

(iii) I appropriate an amount of **Rs.36,36,858/- (Rupees Thirty Six Lakh Thirty Six Thousand Eight Hundred Fifty Eight only)** against the demand confirmed at Sl. No. (ii);

(iv) I demand interest at applicable rates on the amount demanded at Sl. No. (ii) above, under Section 74 of CGST Act, 2017 read with Section 50 of CGST Act, 2017;

(v) I impose a penalty of **Rs.1,22,89,554/- (Rupees One Crore Twenty Two Lakh Eighty Nine Thousand Five Hundred Fifty Four only)** Section 74(9) of the CGST Act, 2017 read with Sec. 122(2)(b) of the CGST Act, 2017.

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

(i) I drop an amount of **Rs.24,00,916/- (Rupees Twenty Four Lakh Nine Hundred Sixteen only)** payable on the supply of Fish Soluble Paste, during the period from July 2017 to September 2019 as exemption was provided for the same;

(ii) I confirm an amount of **Rs.1,22,89,554/- (Rupees One Crore Twenty Two Lakh Eighty Nine Thousand Five Hundred Fifty Four only)** payable on the supply of Fish Oil, Fish Soluble Paste, availment of ineligible ITC & blocked credit and non-reversal of ITC under Rule 42 & 43 during the period from July 2017 to September 2023, under Section 74(9) of the TNGST Act, 2017;

(iii) I appropriate an amount of **Rs.36,36,858/- (Rupees Thirty Six Lakh Thirty Six Thousand Eight Hundred Fifty Eight only)** against the demand confirmed at Sl. No. (ii);

(iv) I demand interest at applicable rates on the amount demanded at Sl. No. (ii) above, under Section 74 of TNGST Act, 2017 read with Section 50 of TNGST Act, 2017;

(v) I impose a penalty of **Rs.1,22,89,554/- (Rupees One Crore Twenty Two Lakh Eighty Nine Thousand Five Hundred Fifty Four only)** Section 74(9) of the TNGST Act, 2017 read with Sec. 122(2)(b) of the TNGST Act, 2017.

5. The learned counsel for the petitioner submits that in so far as the 'Fish Meal' is concerned, this Court has already allowed the Writ Petitions 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***, which was filed under the similar circumstances by directing the petitioners therein to file statutory appeal before the Appellate Authority without pre-deposit *vide* order dated 02.07.2024.

6. The learned counsel for the petitioner submits that in so far as the demand in respect of other items other than the 'Fish Meal' are concerned, the petitioner will pre-deposit 10% of the disputed tax as is contemplated under Section 107 of the respective GST enactments.

7. I find sufficient merits in the submissions of the learned counsel for the petitioner in the light of the order passed by this Court in W.P.(MD)Nos.14068, 14069, 14220 and 14253 of 2023 *vide* order dated 02.07.2024 in the case of ***Rehoboth Fish Meal and Oil Plant*** (cited supra).

8. Under these circumstances, the Court is inclined to dispose of this Writ Petition by directing the petitioner to file statutory appeal before the Appellate Authority/the Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai, within a period of 30 days from today.

9. The petitioner shall pre-deposit 10% of the disputed tax of the other items except for 'Fish Meal' as per Section 107 of the respective GST enactments in the light of the orders passed by this Court in ***Rehoboth Fish Meal and Oil Plant*** (cited supra) within a period of 30 days from today, who shall await for the orders of the Hon'ble Supreme Court on the issue relating to classification of 'Fish Meal'.

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

Index : Yes / No
Internet : Yes / No
apd

26.07.2024

To

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

C.SARAVANAN, J.

apd

W.P.(MD) No.17101 of 2024

26.07.2024