BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17418 of 2024
and
W.M.P.(MD)No.14944 of 2024

Pearl City Marine Products Pvt. Ltd.,
Represented by its Managing Director. ... 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.11/ADC/GST/2024-25 dated 17.05.2024 in DIN – 20240559XO000000A27 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.11/ADC/GST/2024-25 dated dated 17.05.2024 bearing reference in GEXCOM/ADJN/GST/ADC/214/2024.

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

A. In respect of Integrated Goods and Service Tax:

(i) I drop an amount of **Rs.73,98,204/- (Rupees Seventy Three Lakh Ninety Eight Thousand Two Hundred Four only)** payable on the supply of "Fish Meal" being excess demand amounting to Rs.70,52,940/- in respect of exports of fish meal and excess demand amounting to Rs.3,45,264/- raised for the period from October 2019 to March 2020.

(ii) I confirm an amount of **Rs.8,87,53,064/- (Rupees Eight Crore Eighty Seven Lakh Fifty Three Thousand Sixty Four 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;

(iii) 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 73 and Section 50 of CGST Act, 2017; and

(iv) I impose penalty of **Rs.88,75,306/- (Rupees Eighty Eight Lakh Seventy Five Thousand Three Hundred Six only)** under Section 73(9) of the CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017.

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A. In respect of Integrated Goods and Service tax:

(i) I drop an amount of **Rs.1,07,80,529/- (Rupees One Crore Seven Lakh Eighty Thousand Five Hundred Twenty Nine only)** being excess demand amounting to Rs.1,07,69,775/- in respect of exports of fish oil and supply of fish soluble paste amounting to Rs.10,754/- made before 30.09.2019 which is exempted ;

(ii) I confirm an amount of **Rs.2,71,86,683/- (Rupees Two Crore Seventy One Lakh Eighty Six Thousand Six Hundred Eighty Three only)** for 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 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 and Section 50 of CGST Act, 2017; and

(iv) I impose penalty of **Rs.2,71,86,683/- (Rupees Two Crore Seventy One Lakh Eighty Six Thousand Six Hundred Eighty Three only)** under Section 74(9) of the CGST Act, 2017 read with Section 122(2)(b) of CGST Act, 2017.

B. In respect of Central Goods and Service Tax:

(i) I confirm an amount of **Rs.29,04,756/- (Rupees Twenty Nine Lakh Four Thousand Seven Hundred Fifty Six only)** for the period from July, 2017 to September, 2023 under Section 74(9) of the CGST Act, 2017;

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

(iii) I impose penalty of **Rs.29,04,756/- (Rupees Twenty Nine Lakh Four Thousand Seven Hundred Fifty Six only)** under 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 confirm an amount of **Rs.29,04,756/- (Rupees Twenty Nine Lakh Four Thousand Seven Hundred Fifty Six only)** for the period from July, 2017 to September, 2023 under Section 74(9) of the CGST Act, 2017;

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

(iii) I impose penalty of **Rs.29,04,756/- (Rupees Twenty Nine Lakh Four Thousand Seven Hundred Fifty Six only)** under Section 74(9) of the CGST Act, 2017 read with Sec. 122(2)(b) of the CGST 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. The Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai shall dispose of the appeal, subject to the decision of the Hon'ble Supreme Court on the classification of 'Fish Meal'.

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

26.07.2024

Index : Yes / No
Internet : Yes / No
apd

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.17418 of 2024

26.07.2024