BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) No.23501 of 2024

Marksmen Aquatic Products LLP,
represented by its Designated Partner.... Petitioner

-vs-

1.The Commissioner of CGST & CE (Appeals),
Office of the Commissioner of GST and Central Excise (Appeals),
Coimbatore Circuit Office, Madurai,
4, Lal Bahadur Shasthtri Marg,
CR Buildings,
Madurai – 625 002.

2.Additional Commissioner,
Office of the Additional Commissioner of
CGST & Central Excise,
No. 7, Tractor Road, NGO 'A' Colony,
Tirunelveli – 627 007. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records in the proceedings of the 1st Respondent in Notice A No.326/2024 -GST, dated 24.09.2024, issued by the 1st Respondent and to quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.N.Dilip Kumar,
Senior Standing Counsel.

ORDER

This Writ Petition has been filed, challenging the Notice in A No. 326/2024 -GST, dated 24.09.2024, issued by the first respondent.

2. It is submitted that the petitioner is engaged in manufacture and supply of fish meal and claimed exemption in respect of supply of fish meal. Circular No.80/54/2018-GST, dated 31.12.2018, was issued clarifying that fish meal would attract 5% GST under S.No.103 in Notification No. 1/2007-Central Tax (Rate), dated 28.06.2017. The said circular was challenged in a batch of cases in W.P.(MD) No.16770 of 2019, which was allowed by a learned single Judge on 05.10.2021, quashing the circular, in so far as levy of tax on fish meal, on finding that fish meal was exempt in terms of Sl.No.102 of Notification No.02/2017-C.T.(Rate), dated 28.06.2017. The order of the learned single Judge was carried in appeal in W.A.(MD) Nos.112 to 116 of 2022, wherein the order of the learned single Judge was set aside on 03.11.2023. Against the

order of the Division Bench of this Court, S.L.Ps. were preferred before the Supreme Court, wherein the Supreme Court granted stay of recovery proceedings in S.L.P.(C) No.5573 of 2024, dated 18.03.2024.

3. While so, the petitioner has also approached this Court in W.P. (MD) No.14220 of 2024, wherein this Court was pleased to issue the following directions :

> *"9. Under these circumstances, this Court is of the view that to balance the interest of the petitioners and the Revenue, there shall be a stay of all recovery proceedings pending further orders of the Hon'ble Supreme Court. Since the impugned orders are the appealable orders in terms of Section 107 of the respective GST enactments, the petitioners are directed to file statutory appeal before the respective Appellate Commissioner under Section 107 of the respective GST enactments within a period of 30 days from the date of receipt of a copy of this order.*
>
> *10. The Appellate Commissioner shall entertain the appeals to be filed by the respective petitioners and pass final orders subject to the final outcome of the SLPs., that are pending before the Hon'ble Supreme Court at the behest of the petitioners and others challenging the vires of the Circular No.80/54/2018-GST dated 31.12.2018."*

Similar writ petition came to be filed by another taxable person, namely, Hameed Marine Private Limited, in W.P.(MD) No.17101 of 2024 and this Court, after making a reference to the order of this Court in W.P.(MD) No. 14220 of 2024, was pleased to pass the following directions :

"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'."

4. It is submitted by the learned counsel for the petitioner that the appellate authority has now issued a hearing notice when the question of exemption or otherwise of the supply of fish meal is pending before the

Supreme Court. Placing reliance upon the order of this Court in W.P.(MD) No. 17101 of 2024, dated 26.07.2024, it is submitted that the appellate authority may be directed to keep the appeal in abeyance until the issue stands resolved by the Supreme Court.

5. Learned Senior Standing Counsel for the respondent Department has no objection.

6. In view of the above, this Writ Petition is closed, directing the appellate authority, namely, the first respondent to keep the appeal in abeyance and await the outcome of the decision of the Supreme Court relating to classification of fish meal in S.L.P.(C) No.5573 of 2024. No costs. Consequently, the connected W.M.P.(MD) No.19886 of 2024 is closed.

03.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

dixit

To:

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MOHAMMED SHAFFIQ, J.

dixit

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