IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.6663, 6673, 6729, 6858, 6860 & 6898 of 2025
and
W.M.P.Nos.7298, 7300, 7314,7317, 7384, 7385, 7548, 7549, 7554, 7558, 7604 & 7607 of 2025

Tvl. Sai Lakshme Milk Products
rep. by its Proprietor, Mrs. Subramani Santhi
742/2, Salem Main Road, Karagur,
Krishnagiri – 635/ 111. ...Petitioner in all W.Ps.

Vs.

The State Tax Officer
Inspection Cell- 3, Hosur,
3/47, Sapthagiri Complex, Thorapalli Agraharam Village
Adj to Ashok Leyland Unit-II, Gandhi Nagar
Hosur (TK) Krishnagiri – 635 109. ...Respondent in all W.Ps.

Common Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to the passing of the impugned order bearing Ref.No.33ANDPS0975Q1ZD/2020-21,2019-20, 2022-23, 2018-19, 2023-24 and 2021-22dated 25.11.2024 (for the years 2020-21, 2019-20, 2022-23, 2018-19, 2023-24 & 2021-22) passed by the respondent and to quash the same as arbitrary.

For Petitioner in all W.P.s : Mr.G.Natarajan
For Respondent in all W.P. : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

COMMON ORDER

Heard Mr.G.Natarajan learned counsel appearing for the petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader (T) who takes notice on behalf of the respondent. With consent, the main Writ Petitions are taken up for final disposal at the stage of admission itself.

2. The challenge in these Writ Petitions is to the order passed by the respondent dated 25.11.2024 for the years 2020-21, 2019-20, 2022-23, 2018-19, 2023-24 & 2021-22 and to quash the same. As the issue involved in all these Writ Petitions is identical in nature and the parties are also one and the same, the Writ Petitions were taken up together and disposed of vide this Common Order.

3. The learned counsel for the petitioner would submit that the impugned orders have been passed by the respondent on the ground that on verification of GSTR-3B and GSRT-9C, the petitioner/taxpayer has paid 5% of the tax in respect of sales of Sweet, Paneer, but the petitioner has dealt in

Ghee and Butter as well, which attracts 12% of tax, and therefore, the demands are confirmed. The learned counsel for the petitioner further submitted that at time of filing reply, the petitioner has filed all relevant documents, such as sales reports, sales summaries, and invoices for purchase of machinery for manufacturing Ghee both in the GST Portal as well as manually, the respondent, instead of properly appreciating all those documents, disregarded the same with a cryptic finding that "on verification made with GST registration certificate, the petitioner has obtained commodity of 'Butter and other Fats and Oils Derived from Milk, Diary spreads other Ghee, in the head of goods, bearing the HSN Code : 04059020. Further, it is the contention of the learned counsel for the petitioner that as per the normal trade practice, while taking the GST registration, the tax payer selects the HSN of the goods, which he may deal in future too, and therefore, merely because, the GST Registration certificate of the petitioner's contains HSN code; viz., HSC :04059020 (Ghee), the same cannot lead to an inference that the petitioner is supply the Ghee.

3.1 Further, it is submitted by the learned counsel for the petitioner the petitioner would have also explained all these aspects even during the personal hearing and would have also provided the hard copy of the documents, had the respondent sought for it, whereas, the respondent proceeded to confirm the demand proposed in the show cause notice by stating that, "in the absence of Ghee and Butter sales details, the escaped turnover is taken as 50% of the total outward taxable supply, which is incorrect. Therefore, the learned counsel would submit that the impugned orders passed by the respondent, without proper appreciation of reply and documents are non-speaking orders and liable to be quashed. The learned counsel also fairly submitted that, in the event this Court is inclined to set aside the impugned orders, the petitioner is ready and willing to deposit Rs.30,00,000/-, and hence, seeks for remanding the matters to the respondent for fresh consideration.

4. The learned Additional Government Pleader (T) for the respondent justified the impugned orders passed by the respondent by contending that, there were many factual issues involved in the petitioner's case and that though reply was filed by the petitioner, in the absence of relevant supportive documents in respect of those factual issues, the demand has been confirmed and the same requires no interference.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. The petitioner is a registered dealer on the files of the respondent-GST Department and is engaged in the supply of various diary products. Pursuant to a surprise inspected conducted by the Economic Official Wings of the respondent-GST Department, the petitioner's case was selected for scrutiny and subsequently, a show cause notice along with a summary in Form DRC-1 was issued on 07.10.2024, proposing the tax demand under Section 74 of the CGST Act,2017 along with interest and penalty. The petitioner, on receipt of said show cause notice, filed a detailed reply dated 20.10.2024, along with relevant documents, such as sales reports, sales summaries, and invoices for purchase of machinery for manufacturing Ghee both in the GST Portal as well as manually.

6.1 Therefore, the respondent, instead of taking into consideration of the reply and all such documents, which were made available by the petitioner both through GST portal as well as manually, disregarded the same and passed the impugned orders on the ground that the petitioner/taxpayer has paid 5% of the tax in respect of sales of sweet, paneer, milk cake, khova and others but the petitioner has dealt in Ghee and Butter as well, which attracts 12% of tax, and in the absence of Ghee and Butter sales details, the escaped turnover is taken as 50% of the total outward taxable supply, and the demands are confirmed. Further, the respondent, while arriving at such conclusion has taken into consideration of the GST registration certificate obtained by the petitioner and rendered a cryptic finding that "on verification made with GST registration certificate, the petitioner has obtained commodity of 'Butter and other Fats and Oils Derived from Milk, Diary spreads other Ghee, in the head of goods, bearing the HSN Code : 04059020.

6.2 It is the contention of the learned counsel for the petitioner that as per the normal trade practice, while taking the GST registration, the tax payer selects the HSC of the goods, which he may deal in future too, and therefore, merely because, the GST Registration certificate of the petitioner contains HSN code; viz., HSC :04059020 (Ghee), the same cannot lead to an inference that the petitioner is supplying the Ghee as well.

6.3 Further, it is the grievance of the petitioner that had the respondent has raised such query at the time of personal hearing and sought for such details related to the sales made in respect of the Ghee and Butter products the petitioner would have, perhaps, explained all these aspects and would have also provided the hard copy of the documents, viz., the invoice copies related to the sales turnover of Ghee, inasmuch as, even at the time of filing the reply, the petitioner had made such documents available by uploading the same in the GST Portal, but, the respondent failed to take into consideration of those documents, and passed the impugned orders, which are nothing but non-speaking orders and an outcome of total non-application of mind.

6.4 Thus, this Court, taking into consideration of the fair submission made by the learned counsel for the petitioner that, in the event this Court is inclined to set aside the impugned orders, the petitioner is ready and willing to deposit Rs.39,00,000/- and would furnish the hard copies of the documents with regard to the sales turnover of Ghee, is inclined to pass/issue the following orders/directions:-

i) The impugned orders passed by the respondent dated 25.11.2024 are set aside and the matters are remanded to the respondent for fresh consideration, however, subject to the condition that the petitioner deposits a sum of Rs.39,00,000/- laksh within a period of two weeks from the date of receipt of a copy of this order.

ii) The petitioner, after making such payment, within the time, as stipulated by this Court, is directed to file all documents, particularly, the hard copies of the documents, related to the sales turnover of ghee, along with additional reply, if any, if the petitioner intends to file within a period of three weeks thereon.

iii) Thereupon, the respondent is directed to consider the additional reply, if any, filed by the petitioner and the documents, particularly, the hard copies of the documents, related to the sales turnover of ghee, and after perusing the invoice copies furnished by the petitioner under GSTR-1, shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

7. In the result, the Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.04.2025

sd

Index : yes/no
Neutral Citation : yes/no

To

The State Tax Officer
Inspection Cell- 3, Hosur,
3/47, Sapthagiri Complex, Thorapalli
Agraharam Village
Adj to Ashok Leyland Unit-II, Gandhi Nagar
Hosur (TK) Krishnagiri – 635 109.

Krishnan Ramasamy,J.,

sd

W.P.No.6663 ,6673, 6729 6857
6860 & 6898of 2025

07.04.2025