IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.13209 of 2025
and
W.M.P.No.14757 of 2025

M/s. Century Paper Sacks Pvt Ltd.,
Represented by its Director
Mr.A.M.Prakash
Plot No.76 & 77, EPIP,
SIPCOT Industrial Park, Gummidipoondi,
Gummidipundi, Chennai – 601201. ... Petitioner

Vs.

1. The Commissioner (APPEAL-II),
   NEWRY TOWER, No.2054-I Block, II Avenue
   12th Main Road, Anna Nagar,
   Chennai – 600 040.

2. The Joint Commissioner (Adj)
   Office of the Commissioner of GST & Central Excise
   Chennai Outer,
   NEWRY TOWER, No.2054-I Block, II Avenue
   12th Main Road, Anna Nagar,
   Chennai – 600 040.

3. The Additional Director
   The Directorate General of Goods And Services Tax Intelligence Chennai,
   Zonal Unit,
   5th Floor, Tower-II, BSNL Building,
   No.16, Greams Road, Chennai – 600 006.

4. The Assistant Commissioner,
Gummidipoondi Assessment Circle,
No.32, Integrated Commercial Taxes Complex
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records comprised in impugned Order in Appeal No. 84/2024 dated 22/05/2024 on the file of the 1st Respondent and quash the same.

For Petitioner	:	Ms.Dhana Madhvi For Mr.P.Purushotham
For R1 & R2	:	Mr.K.S.Ramaswamy Senior Standing Counsel
For R3	:	Ms.Aswini Junior Panel Counsel
For R4	:	Ms.Amirta Poonkodi Dinakaran Government Advocate

ORDER

In this Writ Petition, the petitioner has challenged the Order-In-Appeal No.84/2024 dated 22.05.2024 passed by the 1st respondent dated 22.05.2024, whereby the appeal against the Order-in-Original No.18/2022-GST(JC) dated 23.12.2022 passed by the 2nd respondent has been rejected.

2. By the aforesaid Order-in-Original No.18/2022-GST(JC) dated 23.12.2022, the proposal in Show Cause Notice No:79/2022 (OR.No.27/2021) dated 04.08.2022 has been confirmed against the petitioner. The proposal in the said Show Cause Notice reads as under:-

> *"12. Now therefore, M/s Century Paper Sacks Private Limited having GSTIN: 33AAECC6665J1ZH with principal place of business at 76,77, EPIP, SIPCOT Industrial Park, Gummidipoondi, Chennai - 601201 is hereby called upon to show cause to the Additional/Joint Commissioner(Adj.), Chennai Outer Commissionerate, 2054, Newry Towers, 2nd avenue, 12th main road, Anna Nagar, Chennai-600040 (**Adjudicating Authority**), within 30 days of receipt of this notice, as to why:*
>
> *(i) An amount of **Rs. 74,75,797/- (Rupees Seventy Four Lakhs Seventy Five Thousand Seven Hundred and Ninety Seven only)** being the IGST short paid for the period from 01.07.2017 to 31.12.2020 should not be demanded under the provisions of Sub section (1) of Section 74 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;*
>
> *(ii) An amount of **Rs. 1,74,16,238/- (Rupees One Crore Seventy Four Lakhs Sixteen Thousand Two Hundred and Thirty Eight only)** being the CGST short paid for the period from 01.07.2017 to 31.12.2020 should not be demanded under the provisions of Sub section (1) of Section 74 of the CGST Act, 2017.*
>
> *(iii) An amount of **Rs.21,08,287.50/- (Rupees Twenty One Lakhs Eight Thousand Two Hundred and Eighty Seven Only)** being the differential CGST paid as discussed in para 8.2 should not be appropriated towards the amount demanded in Sl.No. (ii) above;*

(iv) An amount of ***Rs. 1,74,16,238/- (Rupees One Crore Seventy Four Lakhs Sixteen Thousand Two Hundred and Thirty Eight only)*** *being the TNGST short paid for the period from 01.07.2017 to 31.12.2020 should not be demanded under the provisions of Sub section (1) of Section 74 of the TNGST Act, 2017;*

(v) An amount of ***Rs.21,08,287.50/- (Rupees Twenty One Lakhs Eight Thousand Two Hundred and Eighty Seven Only)*** *being the differential TNGST paid as discussed in para 8.2 should not be appropriated towards the amount demanded in Sl.No. (iv) above;*

(vi) Interest should not be demanded from them on the amounts demanded at Sl.Nos. (i) above under Section 50 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;

(vii) Interest should not be demanded from them on the amounts demanded at Sl.No.(ii) above under Section 50 of the CGST Act, 2017;

(viii) Interest should not be demanded from them on the amounts demanded at Sl.No.(iv) above under Section 50 of the TNGST Act, 2017;

(ix) Penalty in terms of Section 74 (1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 should not be imposed on them which is equal to the amount demanded at Sl. No (i) above;

(x) Penalty in terms of Section 74 (1) of the CGST Act, 2017 should not be imposed on them which is equal to the amount demanded at Sl. No (ii) above;

(xi) Penalty in terms of Section 74 (1) of the TNGST Act, 2017 should not be imposed on them which is equal to the amount demanded at Sl. No (iv) above;

13. M/s CPSPL are hereby directed to produce all the evidence upon which they intend to rely in support of their defense. They *should also indicate in their written reply, whether they wish to be heard in person before the case is adjudicated. If no mention is made in their written explanation, it would be presumed that they do not desire a personal hearing.*

14. If no cause is shown against the action proposed to be taken within the stipulated time or if they do not appear before adjudicating officer when the case is posted for hearing, the case will be decided on the basis of the material evidence available on record and on merits.

15. This notice is issued as per the provisions of Notification No. 02/2017-Central Tax dated 19.06.2017 as amended and as per the monetary limits prescribed for issuing show cause notice vide Circular No. 31/05/2018 - GST (F. No. 349/75/2017) 09.02.2018, as amended.

16. This show cause notice is issued without prejudice to any other action that may be initiated under any other provisions of the IGST Act, 2017/CGST Act, 2017/SGST Act, 2017 or any other law for the time being in force in India.

17. Reliance for issue of this notice is based on the documents (RUDs) listed in Annexure I to this Notice. Copies of the relied upon documents mentioned therein are enclosed and the same constitute integral part of this show cause notice. The non-relied upon documents may be collected from Shri.R.Govindan, Senior Intelligence Officer within 30 days from the date of issue of this notice."

3. Operative portion of the Order-in-Original No.18/2022-GST(JC) dated 23.12.2022 reads as under:

"(i) I Confirm the demand of ***Rs.74,75,797/- (Rupees Seventy Four Lakhs Seventy Five Thousand Seven Hundred***

and Ninety Seven only) *towards IGST short paid for the period from 01.07.2017 to 31.12.2020 under the provisions of Sub section (1) of Section 74 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;*

(ii) I Confirm the demand of ***Rs.1,74,16,238/- (Rupees One Crore Seventy Four Lakhs Sixteen Thousand Two Hundred and Thirty Eight only)*** *towards CGST short paid for the period from 01.07.2017 to 31.12.2020 under the provisions of Sub section (1) of Section 74 of the CGST Act, 2017.*

(iii) I appropriate the amount of ***Rs.21,08,288/- (Rupees Twenty One Lakhs Eight Thousand Two Hundred and Eighty Eight Only)*** *being the differential CGST paid towards the amount demanded in Sl.No. (ii) above;*

(iv) I Confirm the demand of ***Rs.1,74,16,238/- (Rupees One Crore Seventy Four Lakhs Sixteen Thousand Two Hundred and Thirty Eight only)*** *towards SGST short paid for the period from 01.07.2017 to 31.12.2020 under the provisions of Sub section (1) of Section 74 of the SGST Act, 2017;*

(v) I appropriate the amount of ***Rs.21,08,288/- (Rupees Twenty One Lakhs Eight Thousand Two Hundred and Eighty Eight Only)*** *towards differential SGST paid towards the amount demanded in Sl.No. (iv) above;*

(vi) I Confirm the demand of interest at applicable rate on the amount demanded at Sl.No. (i) above under Section 50 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;

(vii) I confirm the demand of interest at applicable rate on the amount demanded at Sl.No. (ii) above under Section 50 of the CGST Act, 2017;

(viii) I confirm the demand of interest at applicable rate on the amounts demanded at Sl.No.(iv)above under Section 50 of the SGST Act, 2017;

(ix) I impose a Penalty of ***Rs.74,75,797/- (Rupees Seventy Four***

> ***Lakhs Seventy Five Thousand Seven Hundred and Ninety Seven only)*** *in terms of Section 74 (1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 on the amount demanded at Sl.No. (i) above.*
>
> *(x) I impose a Penalty of* ***Rs.1,74,16,238/- (Rupees One Crore Seventy Four Lakhs Sixteen Thousand Two Hundred and Thirty Eight only)*** *in terms of Section 74 (1) of the CGST Act, 2017 on the amount demanded at Sl.No. (ii) above.*
>
> *(xi) I impose a Penalty of* ***Rs.1,74,16,238/- (Rupees One Crore Seventy Four Lakhs Sixteen Thousand Two Hundred and Thirty Eight only)*** *in terms of Section 74 (1) of the SGST Act, 2017 on the amounts demanded at Sl.No.(iv) above."*

4. The dispute in the present case pertains to the classification of 'paper bags' manufactured by the petitioner used for the packaging of cement for their customers, who are cement manufacturers.

5. According to the petitioner, the products manufactured by the petitioner are classified under the heading **4819 40 00** of the Customs Tariff Act, 1975 as made applicable to the classification of goods for the purpose of determining the rate read with classification under **Notification No.1/2017-Central Tax (Rate)** dated **28.06.2017**.

6. The petitioner's contention that the aforesaid products were classifiable under heading **4819 40 00** of the Customs Tariff Act, 1975 and

were liable to pay 6% of tax under CGST and SGST in terms of **Serial No.122** of the **II Schedule** to the **Notification No.1/2017-Central Tax (Rate)** dated **28.06.2017** has been rejected by imposing the residual entry at **S.No.453** of the **III Schedule** to the aforesaid Notification dated 28.06.2017.

7. The learned counsel for the petitioner would submit that the petitioner has been in the industry and been manufacturing bags for packaging of cement since the year 2012. The aforesaid classification, which the petitioner adopted from the year 2012 until 30.06.2017 was used for the period in dispute from 01.07.2017 up to 31.12.2020.

8. It is further submitted by the learned counsel for the petitioner that in view of the dispute with the department, the petitioner accepted the aforestated classification of the Department under protest with effect from 01.01.2021, since the issue is revenue neutral as far as the petitioner is concerned.

9. It is further submitted by the learned counsel for the petitioner that the petitioner does not stand to gain any advantage by adopting the classification to pay lesser tax, as the tax element can be passed on to the

recipient, who would only claim Input Tax Credit.

10. It is further submitted by the learned counsel for the petitioner that the issue is not revenue neutral as far as the department is concerned. That apart, it is submitted that the GST Council in its 45th meeting held on 17.09.2021 for the first time proposed to increase the tax liability on paper sacks and corrugated boxes and this has been the subject matter of the discussion which is captured in the minute book at Chapter 18.17 which is as follows:-

> *"18.17. The Secretary referred to Item at serial number 20, Paper sacks and corrugated boxes. He stated that the Hon'ble Member from Madhya Pradesh had stated that the rate be retained at 12%, as 18% would increase the rate of the user manufacturer. He further stated that in the officers meeting Odisha had strongly supported that the rate should be 18%. He further stated that this was a packaging material which is an intermediate good, and it would not raise the cost as mostly it would pass through, and in cases it is not, it would give certain revenue. He stated that the standard rate should be 18% and if Hon'ble Member from Madhya Pradesh agree to 18%, and no other Hon'ble Member had an issue, then Council may agree to this proposal."*

11. It is further submitted by the learned counsel for the petitioner that pursuant to the aforesaid situation, the rate of tax to the subject product was increased to 18% by an amendment to the aforesaid Notification dated 28.06.2017 vide Notification No.8/2021-Central Tax (Rate) dated 30.09.2021, whereby the rate was increased to 9% each (CGST and SGST) in respect of paper bags by inserting Serial No.153A to the III Schedule to the aforesaid Notification dated 30.09.2021.

12. It is moreover submitted by the learned counsel for the petitioner that the notification invoking extended period of limitation based on the classification in dispute cannot be countenanced, in view of the fact that the petitioner has been adopting the said classification since 2012 and particularly, in light of the deliberations in the GST Council Meeting held on 17.09.2021 and subsequent amendment to the aforesaid Notification dated 28.06.2017 by Notification No.8/2021-Central Tax (Rate) as mentioned above.

13. Defending the impugned order, the Learned Senior Standing Counsel for the Respondents 1 and 2 would submit that the impugned order

does not merit any interference. It is submitted by the Learned Senior Standing Counsel that the classification adopted by the petitioner was intended to evade tax and therefore, the department was justified in invoking the machinery under Section 74 of the respective GST enactments and thus, confirmed the demand by the Order-in-Original No.18/2022-GST(JC) dated 23.12.2022 of the 2nd respondent, which now stands confirmed by the Order-In-Appeal No.84/2024 dated 22.05.2024 of the 1st respondent.

14. At this juncture, the learned counsel for the petitioner would submit that the petitioner has discharged 10% of the disputed tax at the time of filing an appeal before the 1st respondent and another 10% thereafter. Therefore, the learned counsel would submit that the issue can be re-examined afresh with a direction to the 2nd respondent, considering the fact that the petitioner entertained the bonafide belief that the petitioner is entitled to pay tax only at 12% (6% each towards CGST and SGST).

15. The Learned Senior Standing Counsel for Respondents 1 and 2, on the other hand, would submit that there is no dispute regarding the classification, however, only with regard to the tax that was payable by the petitioner. It is therefore submitted by the Learned Senior Standing Counsel

that the petitioner is indeed liable to pay tax at a higher rate of duty.

16. It is further submitted by the Learned Senior Standing Counsel that the petitioner ought to have discharged the tax liability at 9% as per the **III Schedule** to **Notification No.8/2021-Central Tax (Rate)** dated **30.09.2021**, instead of 6% as per the **II Schedule** to **Notification No.1/2017-Central Tax (Rate)** dated **28.06.2017**.

17. Having considered the submissions made by the learned counsel for the petitioner and learned Senior Standing Counsel for Respondents 1 and 2, I am inclined to set aside the impugned Orders dated 23.12.2022 and 22.05.2024 and remit the case back to the 2nd respondent to redo the exercise in light of the decision of the Court in ***J.K. Synthetics Limited vs Union of India 1981 ELT 328 (Del.)***, wherein it was held as under in Para 20:

> *20. In Cafoor's case, the Commissioner or Income-tax sought to deny the petitioner, for the years 1950-51 to 1954-55, an exemption which it had been held entitled to for the year 1949-50 under the order of an appellate Board of Review. It was held that the respondent was not estopped by the earlier decision of the Board of Review from challenging the assessee's claim for exemption for subsequent years on the principle that "a question for liability to tax for one year is always to be treated as inherently a different issue from that of liability for another year, even though there may appear to be similarity or*

identity in the questions of law on which they respectively depend" and hence "a Supreme Court decision would be no more capable of setting up an estoppel than would one made by the Board of Review, whatever its precise status as a judicial tribunal" (vide page 597). These principles have been applied in India also. There are indeed a large number of decisions of several High Courts and the Supreme Court on various questions arising under the Income-tax Act, holding that neither the assessee not the department is to be held bound by a stand or attitude adopted by it in an earlier year or on an earlier decision. Indeed, the Supreme Court has held that, in a subsequent year, it is open to the Department to take up, in relation to an earlier transaction, even a stand contrary to that taken by it in relation to the year in which the earlier transaction was put through and came up for consideration— see New Jahangir Vakil Mills Co. Ltd. v. CIT, (1963 49 ITR-SC 137), and CIT v. Brij Lal Lohri, (1972-84 ITR-SC 273). Such being the position in tax law and rating law there can be reason why the same principle will not also be applicable to excise matters. So, it can be urged, the decision of the excise authorities or even the High Court in relation to a particular period does not have a conclusive effect except in regard to that particular period and cannot be treated as a decision for all time to come. If Broken Hill and Cafoor (supra) are to be applied straightaway, the preliminary objection raised by counsel for the petitioners has to fail.

18. This Order has been explained with felicity in Guide to Central Excise by Arvind P. Datar in his book as follows:-

(a) If facts are different;

(b) If fresh facts are brought on record;

(c) The process of manufacture has changed;

(d) If the relevant Tarrif entries have undergone a modification; and

(e) If subsequent to the earlier decision, there has been a pronouncement of a High Court/Supreme Court which necessitates reconsideration of the issue.

19. The Court has also extracted in ***Haji K.P.M. Abdul Kareem vs Assistant Commissioner, GST & Central Excise, Thanjavur (2024) 25 Centax 204 (Mad.)***.

20. That apart, it is noticed that the petitioner had adopted the classification under Heading 4819, which was earlier followed under the excise regime for quite some time. This change in classification ought to have been examined by the respondents in light of the above decision of the Delhi High Court.

21. The classification adopted by the petitioner is extracted hereunder:

S.No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	**(2)**	**(3)**
122	4819	Cartons, boxes and cases of corrugated paper or paper board

22. The rival classification that was imposed by the respondents is reproduced below:-

S.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

23. This rate structure was subsequently altered with the insertion of **Serial No.153A** into the **III Schedule** by the **Notification No.8/2021-Central Tax (Rate)** dated **30.09.2021**. This inserted a fresh description of goods for the first time, including items like boxes, cases and bags etc, which are reproduced below:-

S.No.	Chapter / Heading / Sub- heading / Tariff item	Description of Goods
(1)	(2)	(3)
153A	4819	Cartoons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files; letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.

24. The classification mentioned above was pursuant to the deliberations of the 45th GST Council Meeting held on 17.09.2021, where it

was discussed as under:

"18.17. The Secretary referred to Item at serial number 20, Paper sacks and corrugated boxes. He stated that the Hon'ble Member from Madhya Pradesh had stated that the rate be retained at 12%, as 18% would increase the rate of the user manufacturer. He further stated that in the officers meeting Odisha had strongly supported that the rate should be 18%. He further stated that this was a packaging material which is an intermediate good, and it would not raise the cost as mostly it would pass through, and in cases it is not, it would give certain revenue. He stated that the standard rate should be 18% and if Hon'ble Member from Madhya Pradesh agree to 18%, and no other Hon'ble Member had an issue, then Council may agree to this proposal."

25. This was also captured by this petitioner in their reply to the intimation in DRC-01A dated 03.08.2022, the relevant portion is reproduced below:-

"14.1 Hitherto, corrugated boxes and cartoons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule) while other cartoons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October, 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017)."

14.2 For the period to 1.10.2021, the Council upon *taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%."*

26. Therefore, these aspects ought to have been considered before the Order-in-Original No.18/2022-GST(JC) dated 23.12.2022 was passed by the 2nd respondent or the Order-In-Appeal No.84/2024 dated 22.05.2024 was passed by the 1st respondent.

27. Considering the overall facts and circumstances of the case and the fact that the petitioner has already deposited 10% of the disputed tax at the time of filing an appeal before the 1st respondent and a further 10% thereafter, the case is remitted back to the 2nd respondent to pass a fresh order on the merits by taking the above aspects into consideration, subject to the petitioner depositing another 20% of the disputed tax in cash from the Petitioner's Electronic Cash Register within a period of 30 days from the date of receipt of a copy of this order to secure the interest of the revenue.

28. Any further amount recovered or deposited pursuant to the aforesaid Order-in-Original No.18/2022-GST(JC) dated 23.12.2022, shall be set off against the pre-deposit of 20% as ordered above.

29. Subject to the petitioner depositing 20% of the disputed tax as ordered above, the 2nd respondent shall proceed to pass a fresh order on merits by taking into consideration the above observations, within a period of three months from the date of such deposit.

30. While passing the order, the 2nd respondent shall also examine whether the notification invoking the extended period of limitation under Section 74 of the respective GST enactments can be made out, particularly when there is a dispute relating to classification where an ambiguity exists.

31. Accordingly, the impugned orders dated 23.12.2022 and 22.05.2024 are quashed and the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

20.11.2025

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Neutral Citation : Yes / No

To

1. The Commissioner (APPEAL-II),
   NEWRY TOWER, No.2054-I Block, II Avenue
   12th Main Road, Anna Nagar,
   Chennai – 600 040.

2. The Joint Commissioner (Adj)
   Office of the Commissioner of GST & Central Excise
   Chennai Outer,
   NEWRY TOWER, No.2054-I Block, II Avenue
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3. The Additional Director
   The Directorate General of Goods And Services Tax Intelligence Chennai,
   Zonal Unit,
   5th Floor, Tower-II, BSNL Building,
   No.16, Greams Road, Chennai – 600 006.

4. The Assistant Commissioner,
   Gummidipoondi Assessment Circle,
   No.32, Integrated Commercial Taxes Complex
   Elephant Gate Bridge Road,
   Vepery, Chennai – 600 003.

C.SARAVANAN, J.

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W.P.No.13209 of 2025

20.11.2025