IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2023

Pronounced on : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.2851 of 2021 and
W.M.P. Nos.3185 and 3187 of 2021

Naga Ltd.,
(Represented by its Authorized Signatory)
General Manager Finance & Accounts
Mr.S.Deepak Kumar
No.1 Trichy Road, Dindigul 624 005. ... Petitioner

v.

1.Puducherry Authority for Advance Ruling,
Office of the Commissioner of State Tax,
Commercial Taxes Complex, 100 Feet Road,
Ellaipillaichavady,
Puducherry 605 005.

2.Karaikal Port Pvt. Ltd.,
P.B. No.32, Keezhavanjore village,
T.R.Pattinam, Karaikal. ... Respondents

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Prayer: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records relating to the Order No. 02/ Puducherry – AAR/2020-21 dated 18.11.2020 passed by the 1st respondent, quash the same.

For petitioner : Mr.Raghavan Ramabadran for M/s Lakshmi Kumaran and Sridharan

For Respondents : Mr.B.Ramaswamy (for R1) Senior Standing Counsel
Mr.N.Jayakumar (for R2)

ORDER

The present writ petition is filed challenging the impugned order No.02/Puducherry-AAR/2020-21 dated 18.11.2020 passed by the 1st respondent against an Advance Ruling Application filed by the 2nd respondent. The issue raised in the present writ petition revolves around the scope of Notification No.12 of 2017 Central Tax (Rate) dated 28.06.2017 in particular S.No.54(e) of the said notification.

2. The petitioner is engaged in the business of milling wheat into wheat products such as maida, atta, sooji, bran etc. The petitioner is registered under the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as

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the "TNGST Act") and under Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") in relation to its business operations in Tamil Nadu. For milling purposes, the petitioner imports wheat from other countries into India through various seaports. The petitioner engaged service providers for clearing the imported wheat from seaports. The services include the activity of loading, unloading, packing, storage or warehousing of the imported wheat and its further clearance to the petitioner's factory. The present dispute is with regard to the contract between the petitioner and the 2nd respondent for provision of the above services.

2.1. The petitioner sought for an Advance Ruling under Section 97 of CGST Act, seeking clarification on whether the services rendered by the 2nd respondent in respect of wheat imported by the petitioner is exempted under S.No.54(e) of the Notification No.12/2017-CT dated 28.06.2017. The application filed by the petitioner was rejected by the Tamil Nadu Authority for Advance Ruling vide Order No.18/AAR/2018 dated 29.10.2018 on the ground of lack of jurisdiction as only a supplier on whom incidence of tax lies can seek

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an Advance Ruling as per Section 95(a) of the CGST Act and the petitioner being a recipient of the above services cannot maintain the application under Section 97 of CGST Act.

2.2. Thereafter, the 2nd respondent i.e., supplier in the contract with the petitioner filed an application for Advance Ruling dated 02.01.2019 in relation to the applicability of the above Exemption Notification with regard to the services rendered to the petitioner. The 1st respondent passed the impugned order ruling that the above services are not entitled to exemption on the ground that the imported wheat with regard to which the services were rendered was not meant for the primary market but instead meant / intended to be used by the petitioner at its factory for further processing of the wheat imported into atta, maida and sooji. Aggrieved by the impugned order and left with no other remedy, the petitioner has filed the present writ petition.

3. Before proceeding further, it may be relevant to refer to the relevant portions of the impugned order wherein after extracting the definition of the expression "agricultural produce" it was held as under:

> *"5.2. Thus, from the above it could be seen that the said services of loading, unloading, packing, storage or warehousing rendered by a taxpayer can be eligible for exemption only if they are rendered for the above purposes as clearly*

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defined in the Notification 1.e. only if the services are extended till the products are taken to primary market for disposal and as a corollary any services extended beyond the stage of primary market are not eligible for classification under the Service Accounting Code 9986 and hence cannot be considered for exemption under the said Notification.

....

6. Hence it is very clear from the above said documents that the applicant is providing the services of loading, unloading, packing, storage or warehousing in respect of the 'wheat' which is procured from the farmers from the foreign country and after getting imported Into India at Karaikal Port is destined to importer's factory for further processing and it is not destined to the primary market as required for the services to be classified under sl. No. 54(e) of Heading 9986 of the said exemption-Notification. Therefore, the said services rendered by the applicant in the instant case are not eligible for the exemption under the said Notification."

(emphasis supplied)

4. Preliminary Objection:

Before examining the correctness or otherwise of the Advance Ruling a preliminary objection was raised that the present writ petition filed by the petitioner challenging the order of the Advance Ruling Authority passed on an application filed by the 2nd respondent is not maintainable inasmuch as the petitioner was not a party before the Advance Ruling Authority. On the other hand, it was submitted by the learned counsel for the petitioner that the order of

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the 1st respondent ruling that the transactions between the petitioner and the 2nd respondent is not entitled to exemption in terms of S.No. 54(e) Notification No.12/2017 results in adverse civil consequences on the petitioner inasmuch as the tax burden would ultimately be passed on to the petitioner by the 2nd Respondent. It was submitted that the writ petition is thus maintainable for the petitioner cannot be left without any remedy to challenge the order of the Advance Ruling Authority when the same results in adverse civil consequences.

5. On considering the submissions of both parties as to the maintainability, this Court finds that the petitioner is aggrieved by the impugned order insofar as it Rules that the services rendered to the petitioner by the 2nd respondent is not entitled to exemption in terms of Notification No.12/2017. The impugned Advance Ruling is binding on the 2nd respondent and their jurisdictional officers as per Section 103(1) of the CGST Act. Resultantly, the 2nd respondent would be compelled to charge
CGST/SGST/IGST as the case may be on the supply of services in terms of the impugned Ruling. The petitioner being the service recipient will ultimately have to bear the tax burden resulting in direct financial impact on the petitioner.

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5.1. The issue as to the maintainability had come up for consideration in similar circumstances and it has been held that the writ petition is maintainable. In this regard, it may be relevant to refer to the following judgments:

i) I.D.L. Chemicals Ltd. v. Union of India, (1996) 5 SCC 373 at page 377:

This was a case wherein the appellant company namely I.D.L. Chemicals Ltd. was engaged in manufacture of explosives. Ammonium Nitrate melt 80% was purchased by the Appellant company for manufacture of explosives from SAIL. The above commodity was exempt and the appellant enjoyed the benefit of such exemption by treating the same as fertilizer. Subsequently, the Central Board of Excise and Customs reclassified that Ammonium Nitrate melt 80% used in manufacture of explosives was ineligible to exemption. The excise authorities demanded duty from SAIL and in turn SAIL demanded the same from the appellant. Against this background question arose as to whether the appellant would have the locus to challenge the discontinuance of exemption and it was held that writ petition was maintainable as the appellant would suffer adverse civil consequences. The following extract is relevant :

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*"**13.** There is, in our view, no doubt that the reclassification of ammonium nitrate by the order of the Central Board dated November 1980, casts upon the appellants the obligation to pay the excise duty that is leviable as a result. Such obligation does not arise merely by reason of an agreement between SAIL and the appellants but also by virtue of the provisions of Chapter X of the Central Excise Rules, 1944. The appellants suffer adverse civil consequences and have, therefore, the locus to challenge the reclassification. There is no forum other than the High Court under Article 226 where they can do so, and the High Court was in error in not entertaining the later writ petition (No. 183 of 1981) and referring the appellants to a civil suit. Insofar as the earlier writ petition (No. 86 of 1980) is concerned, the High Court ought, for the same reason, to have dealt with the contention of the appellants that ammonium nitrate remained exempt from excise duty by reason of the exemption notification until 21-7-1979, when ammonium nitrate was removed from the purview thereof."* ii) M.Amrutham Petroleum Agency v. Additional Deputy Commercial Tax, Puducherry, 2016 VIL 254 MAD:

This was a case wherein Bharat Petroleum Corporation Limited and Indian Oil Corporation Limited had appointed dealers in the Union Territory of Puducherry including the writ petitioner namely Amurtham Petroleum Agency. Since the appellant had committed default the appropriate authority under the CST Act refused to issue C Forms resultantly the assessing officer in the State of Tamil Nadu demanded a high rate of tax under the CST Act. Against the above background BPCL and IOCL filed writ petitions inter alia seeking a mandamus to direct the authorities in Puducherry to issue C Forms to M/s.Amurtham

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Agencies. A preliminary objection was raised regarding the locus of BPCL and IOCL on the premise that the above corporations can have only grievance against their dealers and cannot seek any relief against the government of Puducherry. The above preliminary objections as to the locus was rejected by this Court holding as under:

> *"30. Therefore, by virtue of the statutory prescription, it is the Prescribed Authority in the Union Territory of Puducherry, who holds the key to the question of entitlement of the Oil Corporations to pay a lesser rate of tax. In such circumstances, it is not open to the Government of Puducherry to contend that they have nothing to do with the Oil Corporations and that these Corporations have no locus to question the refusal of the Puducherry Authorities to issue 'C' Form Declarations. The refusal of the Puducherry Authorities has a direct financial impact only upon the Oil Corporations and hence, the refusal of the Puducherry Authorities to perform a statutory duty cast upon them, would certainly confer a right upon the Oil Corporations to question their act. The Oil Corporations cannot be non-suited on the ground that they are not the registered dealers under the Puducherry VAT Act, 2007."*

5.2. From a reading of the above judgments, it is clear that the impugned order results in the petitioner suffering adverse civil consequences giving them the locus to challenge the same and maintain the present writ petition. Having held that the writ petition is maintainable, I shall now proceed to examine the contention on merits.

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6. Case of the Petitioner:

a. The impugned order proceeds to reject the claim of exemption on the premise that the imported wheat is moved to the importer's factory for further processing and not meant for primary market, thus the services of loading, unloading, packing, storage or warehousing provided by the 2nd respondent to the petitioner cannot be extended the benefit of exemption in terms of Serial No.54(e) of the Exemption Notification. The above reasoning is challenged as being flawed inasmuch as the Advance Ruling Authority had erred in looking to the use to which the imported wheat is intended to be put in the hands of the importer / petitioner which is wholly irrelevant.

b. That the impugned order proceeds on a misconception as to the scope of the expression "marketable" employed in the definition of "agricultural produce" under Notification No.12/2017. It is settled law that the test for marketability is that it should be capable of being sold and it is not necessary that actual sale must take place. Reliance in this regard was placed on the decision of the Hon'ble Supreme Court in the case of *"Indian Cable Co.Ltd., v. CCE [1994] 74 ELT 22 (SC) and CCE v. Karataka Soaps & Detergents Ltd. [2017] 355 ELT 161 (SC)"*

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c. That it is not in dispute even in the impugned order that the imported wheat is capable of being sold as such in the primary market, as contemplated in the definition of “agricultural produce”. Having found the above condition being satisfied in respect of the services rendered by the 2nd respondent to the petitioner, the denial of exemption under Serial No.54(e) Notification No.12/2017 is clearly unjustifiable.

7. Case of the respondents:

a. That the benefit of the exemption under S.No.54(e) to the Notification No.12/2017 is available only to Services of loading, unloading, packing, storage or warehousing till the products are taken to primary market for disposal and as a corollary any service rendered / extended beyond the stage of primary market is not eligible for exemption under S.No.54(e) of the Notification No.12/2017.

b. Even though the term “agricultural produce” has been defined under Notification/GST Act, the term "Primary Market" has not been defined in the GST Act. The term “Primary Market” in common parlance means and includes a platform or a place, like a Mandi, where the farmers are directly selling to the buyers. However, on perusal of

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the Cargo Handling Agreement for Wheat entered into between the 2nd Respondent - Supplier of Services and the recipient of services i.e. the Petitioner herein, it is evident that the wheat procured from foreign countries on being imported is moved to the petitioner's factory for further processing and conversion into Maida, Atta, Sooji etc., thus the services is not in relation to "agricultural produce".This would be clear from a reading of the following clause in the contract between the petitioner and the

2nd respondent:

> *"NL represents to the KPPL that the bagging of wheat in port is only for transportation convenience from port to their factory and that they will cut open the bags bleed the cargo in their conveyor for further processing only and not meant for market sale"*

7.1. It was thus submitted that the services rendered by the 2nd Respondent is not eligible to exemption thus the impugned order does not warrant any interference.

8. Discussion:

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Before proceeding further, it may be relevant to extract the relevant portion of Notification No.12/2017 dated 28.06.2017, which reads as under:

Government of India Ministry of Finance
Notification No. 12/2017- Central Tax (Rate)
(Department of revenue)

New Delhi, the 28th June, 2017

G.S.R......(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely: Table

S.No.	***Chapter. Section, Heading, Group or Service Code (Tariff)***	***Description of Services***	***Rate (per cent)***	***Condition***
...	....	....	....	....

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54	Heading 9986	Services relating to cultivation of plants 14 and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of - ..... (e) loading, unloading, packing, storage or warehousing of agricultural produce;	Nil	Nil

It may also be relevant to extract the definition of the expression " agricultural produce" in the said notification, which reads as under:

> *"2(d) "agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;"*

8.1. From a reading of the above notification and the definition of

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"agricultural produce", it would be evident that services in relation to "agricultural produce" by way of loading, unloading, packing, storage or warehousing of agricultural produce is exempt. The respondents have rejected the claim of exemption under the above notification on the premise that the activities / services of loading, unloading, packing, storage or warehousing of wheat is not meant for primary market instead the wheat imported is meant / intended to be milled at the petitioner's factory into wheat products such as maida, atta, sooji, bran etc. Thus the contract between the petitioner and the 2nd respondent for services of loading, unloading, packing, storage, warehousing is not rendered in relation to "agricultural produce", thus not entitled to exemption under S.No.54(e) of Notification No.12 of 2017.

9. This Court finds that the above construction sought to be placed by the 1st respondent is grossly misconceived for the following reasons:

9.1. A reading of S.No. 54(e) and the definition of "agricultural produce", would show that the service of loading, unloading, packing, storage or

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warehousing of "agricultural produce" would fall within the scope of S.No. 54(e) and thus exempt. This Court is of the opinion that the 1st Respondent had misdirected itself in examining the use to which the commodity / agricultural produce viz., wheat imported would be put to in the hands of the petitioner to determine the entitlement of the services to exemption or otherwise. The 1st Respondent has proceeded to reject the claim on the premise that the imported wheat is meant to be converted into atta, maida and sooji and therefore it is not intended for the primary market. On a plain reading of the definition of "agricultural produce", all that it does is to identify the nature of the product that would be covered while also including certain processes which does not alter the essential character as an "agricultural produce" but merely makes it marketable for the primary market. The petitioner's entitlement to exemption must be determined by testing whether the services of loading, unloading, packing, storage or warehousing is rendered to agricultural produce or other than "agricultural produce" and not on the basis of the process the agricultural produce is meant to be subject to in the hands of the petitioner/ importer. In other words if on applying the definition of "agricultural produce" to the wheat that is imported and if it qualifies as an "agricultural produce", the mere fact that the

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buyer of "agricultural produce" intended to subject it to various other processes subsequently resulting in conversion of wheat into maida, atta and sooji would not take the services of loading, unloading, packing, storage and warehousing of the "agricultural produce" out of Serial No. 54(e) of the Exemption Notification. The reasoning in the impugned order of the 1st Respondent results in importing a condition as to the use to which the agricultural produce would be subject to in the hands of the service recipient. The above test is wholly alien to decide whether a commodity would fall within the definition of "agricultural produce" contained in the above Notification. The impugned Ruling thus suffers from the vice of arbitrariness inasmuch as it has taken into account aspects/ factors which are irrelevant.

9.2. This Court also finds that the impugned order is flawed inasmuch as it results in adding conditions to exemption notification which is impermissible. In this regard, it may be relevant to refer to the following judgments wherein Courts have rejected the construction of exemption notification which adds

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conditions to the notification resulting in whittling down the width of the Notification. In this regard, it may be useful to refer to the following judgments:

i) *CCE v. Favourite Industries, (2012) 7 SCC 153 : 2012 SCC OnLine SC 229 at page 167*

*"**35.** The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous."* *ii) Commr. of Customs v. Rupa & Co. Ltd. [(2004) 6 SCC 408]:*

"7.....Exemption cannot be denied by giving a construction not justified by the wording of the notification."

(emphasis supplied)

iii) Commr. of Customs (Preventive) v. Reliance Petroleum Ltd. [(2008) 7 SCC 220] , this Court has held : (SCC p. 230, paras 30-31)

"30. ....Where the exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.

(emphasis supplied)

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9.3. Yet another reason the impugned order warrants interference is the fact that the expression "marketable" employed in the definition of "agricultural produce" has been misconceived. A reading of the above definition would show that it only indicates that the agricultural produce must be such that it is marketable i.e., capable of being marketed and it is not required of being actually marketed as such. The construction of the Notification in the impugned order of the 1st Respondent results in converting the expression "marketable" employed in the definition of “agricultural produce” into "marketed", which is impermissible. This would be even more evident if we keep in mind the expression "marketable" has been construed and explained by the Hon'ble Supreme Court on more than one occasion to mean that it is only required to be shown that it is capable of being marketed and not actually marketed. Applying the above reasoning to the term “marketable” used in the definition of “agricultural produce” it would be clear that it only means that the goods in question in the instant case wheat must be capable of being marketed in the primary market and it is not necessary to show that it is actually marketed. In this regard, it may be relevant to refer to the following judgment in *Hindustan*

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Petroleum Corpn. Ltd. v. Union of India, (2001) 10 SCC 157 at page 158

> *"**4**...... The question regarding the concept of marketability was considered by this Court in A.P. SEB v. CCE [(1994) 2 SCC 428] and was reiterated in Indian Cable Co.*
> *Ltd. v. CCE [(1994) 6 SCC 610] in which after extracting the relevant observations from the former case, the Court proceeded to observe as under: (SCC p. 618, para 13)*
> *" 'Marketability' is a decisive test for dutiability. It only means 'saleable', or 'suitable for sale'. It need not be in fact 'marketed'. The article should be capable of being sold or being sold, to consumers in the market, as it is — without anything more."*
>
> *(emphasis supplied)*

9.4. The Hon'ble Supreme Court has reiterated the above view on numerous other occasions some of them being as follows:

1. *Indian Cable Co. Ltd. vs. Collector C.Ex, Calcutta – 1994 (74) E.L.T.22(SC)*
2. *Commissioner of C.Ex and ST., Bangalore vs. Karnataka Soaps and Detergents Ltd. - 2017 (355) E.L.T. 161 (S.C.)*
3. *Gujarat Narmada Valley Fert.Co.Ltd. vs. Collector of Ex. and Cus. - 2005 (184) E.L.T. 128 (S.C.).*

10. In view of the above reasons, this Court is of the view that the impugned order holding that services of loading, unloading, packing etc.,

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rendered in relation to the wheat imported is not entitled to exemption in terms of S.No.54(e) of Notification No.12 of 2017 on the premise that the imported wheat is not meant for primary market as such but it is intended to be converted into maida, atta, sooji etc., in the hands of the recipient i.e., the petitioner herein is unsustainable.

11. The impugned order is set aside. I intend to clarify that I had only examined the correctness of the reasoning contained in the impugned ruling. This Court has not expressed any opinion as to whether any particular transaction is entitled to exemption which would require examination of individual imports by the appropriate authority.

12. The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

10.11.2023

Index: Yes/No
Speaking order / Non Speaking order

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