

M/S Sarvasiddhi Agrotech Pvt. Ltd vs The Union Of India on 20 April, 2021

Equivalent citations: AIRONLINE 2021 TRI 301

Bench: Akil Kureshi, S.G. Chattopadhyay

Page 1 of 13

HIGH COURT OF TRIPURA
AGARTALA
W.P. (C) No.279/2021

M/S Sarvasiddhi Agrotech Pvt. Ltd.,
having the Registered office at 501, Punarnava, 13 B.B Ganguly Street,
Kolkata -700012, and Factory at Industrial Growth Centre,
Bodhjunnagar, Agartala - 799008, Tripura (West).

Represented by- Shri Dipankar Saha, Son of Shri Dilip Kumar Saha,
Director, M/s Sarvasiddhi Agrotech Pvt. Ltd., South of Kumar Pukur,
P.O. Agartala College- 799004. aged about 46 years, Mobile -
7005032583.

.....Petitioner(s)

Versus

1. The Union of India,
Represented by the Secretary of Revenue to the Government of India,
North Block, New Delhi- 110001.
2. The Joint Commissioner of Appeals,
CGST, GST Bhawan, Machkhowa, Guwahati, Assam 781001.
3. The Assistant Commissioner of Central Goods and Service Tax,
Division Tripura-1, Jackson Gate Building, 3rd Floor, Lenin Sarani,
Agartala, Tripura-799001.

.....Respondent(s)

For Petitioner(s) : Mr. T.K. Deb, Advocate.

For Respondent(s) : Mr. Biswanath Majumder, CGC.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Date of hearing and judgment : 20.04.2021.

Whether fit for reporting : No.

Page 2 of 13

JUDGMENT & ORDER (ORAL)

(Akil Kureshi, CJ).

Petitioner has challenged an order dated 03.07.2020 passed by the adjudicating authority as well as an order dated 27.01.2021 passed by the Appellate authority.

2. Brief facts are as under:

Petitioner is a registered company and is engaged in supply of rice in the State of Tripura. According to the petitioner, the company supplies Non-Basmati un-branded rice. However, the State Goods and Service Tax Authorities, on a prior intelligence that the petitioner is dealing in branded rice, carried out a raid at the godown and other premises of the petitioner-

company. This resulted into seizure of certain documents and stock of rice lying in the godowns. Eventually, the adjudicating authority i.e. the Assistant Commissioner of GST issued a Demand cum Show Cause Notice dated 11.03.2019 to the petitioner in which it was conveyed that on a prior intelligence that the petitioner was engaged in manufacturing, package and supply of branded rice in 25 kilogram bags having product names „Aahar Normal , „Aahar Gold and „Aahar Premium without payment of GST, enforcement officers of the department visited the factory premises of the petitioner on 17.07.2018 and found that the petitioner was supplying branded packaged rice in unit containers without payment of GST.

Therefore, bill books, order books and several bags of branded rice packaged while Sarvasiddhi Agrotech Pvt. Ltd. i.e. the petitioner-company were seized. It was alleged that as per the bill books so seized along with the sales statements submitted by the noticees, it would emerge that for the period between 01.07.2017 to 17.07.2018, the petitioner had sold branded rice of Aahar Normal, Aahar Gold and Aahar Premium total taxable value of which came to Rs.27,28,85,021/-. It was pointed out that as per various Notifications issued by the GST council, the terms brand name, registered brand name, actionable claim etc. have been defined. In the notice, it was also pointed out that the petitioner was supplying packaged rice containing marks like 'Aahar rice' with specific image on the container units. It was therefore alleged that the petitioner was supplying rice in unit containers bearing brand names such as Sarvasiddhi Agrotech Pvt. Ltd. and Aahar Normal, Aahar Gold and Aahar Premium on which an actionable claim or enforceable right in a court of law is available. It was also alleged that the noticee had not voluntarily forgone the actionable claim or enforceable right in respect of the brands in question. In view of these averments, it

was alleged that the assessee was liable to pay CGST as well as SGST at prescribed rates on the taxable value of its sales for the period in question which was assessed at Rs.1,03,35,028/-. The noticee was therefore called upon to show cause why such tax with interest and penalty not be recovered.

3. Copy of the reply filed by the petitioner in response to the said show cause is not produced on record. However, from the order in original passed by the adjudicating authority in which the defence put up by the petitioner has been recorded in detail, we gather that the stand of the petitioner was that the petitioner had submitted an affidavit dated 05.04.2019 forgoing the actionable claim or enforceable right on the brand name printed in the unit containers for supply of rice. It was contended that the petitioner has not supplied rice with any package markings on the rice bags with the brand name such as Aahar Normal, Aahar Gold and Aahar Premium. The stock of rice found from the godowns was meant for internal use and was not meant for taxable supply. It was contended that the petitioner had not supplied any branded rice in unit containers after 22.09.2017. There was internal grading of rice as per the quality variety and price which was graded under the erstwhile brand name of Aahar Normal, Aahar Gold and Aahar Premium, which was strictly for internal use and not for supply. It was also contended that the quantity of rice seized included packages marked prior to 22.09.2017, which was meant to be returned as an old stock due to quality disputes, which was still lying with the petitioner.

4. The Assistant Commissioner of GST did not accept these defences of the petitioner and passed the impugned order dated 03.07.2020 in which he referred to the documents and other materials seized during the raid at the premises of the petitioner-company. He noted that during such raid, 1975 bags of Aahar Normal rice, 802 bags of Aahar Gold and 445 bags of Aahar Premium were seized which were later on released on production of bank guarantee by the petitioner. He also referred to invoices and bills of supply of such products by the petitioner during the period under consideration. On basis of such materials he came to the conclusion that the petitioner was supplying branded rice in packaged units. The petitioner's declaration for forgoing actionable claim on the un-registered brand of Aahar Normal, Aahar Gold and Aahar Premium was rejected on the ground that the same was without accompanying affidavit which was required as per the Notification. He rejected the petitioner's defence that the quantity of branded packaged rice seized from the godowns of the company was only for internal use. He eventually held the petitioner liable to pay CGST and SGST at prescribed rates with interest and penalty. He thereupon passed following order:

"ORDER

1. I confirm the demand of Goods & Services Tax of Rs.1,03,35,028.50 (Rupees one crore three lakh thirty-five thousand twenty-eight and paise fifty) (CGST Rs.51,67,514.25 plus SGST R Rs.51,67,514.25) under the Section 74(9) of the Central Goods & Services Tax 2017 read with Section 74(9) of the Tripura State Goods & Services Tax 2017.

2. I order the Noticee to pay interest at the applicable rate on the amount of confirmed demand of Tax of Rs.1,03,35,028.50 (Rupees one crore three lakh thirty-five thousand twenty-eight and paise fifty) in terms of Section 50(1) of the Central Goods & Services Tax 2017 read with Section 50(1) of the Tripura State Goods & Services Tax 2017.
3. I impose penalty equivalent of confirmed demand of Tax of Rs.1,03,35,028.50 (Rupees one crore three lakh thirty-five thousand twenty-eight and paise fifty) in terms of Section 74(1) of the Central Goods & Services Tax 2017 read with Section 74(1) of the Tripura State Goods & Services Tax 2017.
4. The Noticee is also informed that in terms of the Section 74(11) of the Central Goods & Services Tax 2017 read with Section 74(11) of the Tripura State Goods & Services Tax 2017, the Noticee has the option to pay reduced penalty equal to fifty per cent of confirmed demand of Tax of Rs.1,03,35,028.50 (Rupees one crore three lakh thirty-five thousand twenty-eight and paise fifty), provided the Noticee pay the confirmed demand of Tax along with interest payable thereon and reduced penalty equal to fifty percent within thirty days of communication of this order."
5. The petitioner filed Appeal against the said order of the adjudicating authority. The Appellate authority dismissed the Appeal by order dated 27.01.2021 making following observations:

"9. Now, issue to be decided by me whether the confirmation of demand of Rs.1,03,35,028/- with interest on the applicable rate on the amount of confirmed demand and equal amount of penalty on the gross amount received for the period from 22.09.2017 to 17.07.2018 is legal or not. I observe that the adjudicating authority has determined taxable value on the basis of introduction of levy on the packaging rice under the provision of Notification No.27/2017 CT (Rate) dated 22.09.2017. In support of their contention the appellant stated that they have not supplied rice bags with any kind of package markings. Moreover, the appellant contended that they are not having any registered Brand name/Trade name for supply of rice packaged markings, requiring payment of 5% GST under the Notification No.27/2017 CT (Rate) dated 22.09.2017/ Apart from, intimation submitted to the CGST authorities regarding supply of Rice without package marking after introduction of the said notification. The appellant reiterated that neither cross examination was allowed nor relied upon documents were supplied in support of allegations by the adjudicating authority.

10. I find that the appellant has submitted additional submission/clarification with regard to personal hearing held on 01.12.2020. It reveals from the copies of sale register that the appellant has disposed packet rice 25 Kg./50kg from 01.07.2017 to 03.07.2018. In the said register appellant incorporated Bill No, Gate pass No. Description of quantity, weight, rate apart from Party's name and address. In addition the appellant submitted replacement register, and it come from the said

register that 1960 quantity bags and total 50500 kg of rice was dispatched from 05.07.2017 to 11.07.2018 but from the cross-check of the scrutiny is not possible to ascertain the authentication as the entire pages of sales register has not been forwarded by the appellant. The appellant also produced a copy of letter to the department seeking clarification regarding sale of branded rice. I also find from the order in original that the adjudicating authority imposed duty on the rice found in the factory awaiting for supply which was computed as per the provisions of the Notification No. 27/2017 CT (Rate) dated 22.09.2017 for safeguarding the revenue.

11. On going through the contention of the appellant I find that party had supplied rice with marking „Sarvasiddhi Agrotech Pvt. Ltd. besides „Aahar Normal, „Aahar Gold, „Aahar Premium etc. Records i.e. Invoices and sales register, with other contact details for customer as per Legal Metrology Act and Food Safety and Standard Act is established that the product belonged to the Brand guardian and thus violated the provisions of Notification No.27/2017 CT (Rate) dated 22.09.2017 with intent to evading payment of GST under Section 74(p) of the CGST, 2017 read with Tripura SGST, 2017. Ongoing through the submission during hearing and relevant sale register, I find that said documents is not sufficient to ascertain that the packaging items of rice has cleared on 22.07.2017. The appellant has failed to submit manufacturing date or old stock or any valid records to prove that the same has returned back from the buyer. All records along with the physical goods under detention, sales records supplied by the appellant reveals that the party has supplied goods during the period liable for payment of GST. Further, the appellant unable to put forward and material facts or evidence in support of his contention, therefore, I am of the opinion that the said argument of the appellant has no legal validity and liable to be rejected. Therefore, I do not find any reason to interfere the decision of the adjudicating authority and appellant is liable to pay GST with applicable interest under the provision of Notification No.27/2017 CT (Rate) dated 22.09.2017.

12. Regarding imposition of penalty under Section 74(1) of the CGST, 2017 read with Section 74(1) of Tripura SGST, 2017 I observe that the appellant has suppressed the material facts from the department with intent to evade payment of service tax. The department on its own efforts detected the case and raised the demand otherwise it would have been unnoticed. Hence, invocation of extended period under Section 74(1) of the CGST, 2017 read with Section 74(1) of Tripura SGST, 2017 in the instant case is justified. The provisions of Section 74(11) of the CGST, 2017 read with Sec. 74(11) of Tripura SGST, 2017 is also applicable to the appellant. Appeal disallowed.

13. Held accordingly, the appeal filed by M/s. Sarvasiddhi Agrotech Pvt. Ltd. P.O. R.K. Nagar, West Tripura is disposed off in the above terms."

6. Under CGST Act and SGST Act further Appeal would be available before a Tribunal to be constituted for such purpose. Against the order that the Tribunal may pass, the person aggrieved would have a right of Appeal before the High Court only on substantial question of law. However, since the Tribunal is not yet constituted the petitioner has filed the present petition to challenge the order in original and order in Appeal.

7. Learned counsel for the petitioner submitted that the petitioner was not supplying branded packaged rice and therefore, the supply of the petitioner was exempt from GST levies. He submitted that the authority has committed a serious error in coming to the conclusion that the petitioner was supplying branded rice in packaged units. He pointed out that the brands Aahar Normal, Aahar Gold and Aahar Premium were not registered brands and therefore, would not come within the purview of taxable supplies. He also submitted that the seized quantity of rice was only meant for internal use and not for sale. In any case, no demand of GST can arise unless and until the goods are supplied. In the present case, the GST authorities have based their assessment on quantity of rice found in the godown.

8. We have noticed that on a prior intelligence, the officials of GST department had carried out a surprise visit to the premises of the petitioner- company from where several incriminating documents and sizable quantity of packaged rice were seized. The invoices and other sales details established that for the period under consideration, the petitioner had supplied rice in packages of 25 kg each which carried the brand name Aahar Normal, Aahar Gold or Aahar Premium. Sizable quantity of such packaged branded rice was also seized from the premises. It was on the basis of such materials that the adjudicating authority came to the conclusion that the petitioner was engaged in supply of packaged branded rice. The Appellate authority confirmed the finding of the adjudicating authority and dismissed the Appeal of the petitioner. The authorities did not accept the petitioner's ground of the seized rice being only for the internal use and purposes.

9. We do not find any error in the view of the authorities. Firstly, the conclusions of these authorities are based on assessment of materials on record. Secondly, the seizure of sizable quantity of packaged branded rice was an indication of the petitioner dealing in such product. Thirdly, the tax is not demanded on rice stored and seized but on the quantity of rice already supplied which was assessed from the bill books and invoices seized from the premises of the petitioner-company. Further, the petitioner's defence that the quantity of rice lying in the godowns was merely for internal use was also not backed by any evidence. Close to three thousand bags of rice were found lying in the godown. The petitioner's bare contention that it was not meant for supply but only for internal purposes of grading the rice or part of the stock was lying because of quality disputes, was not backed by any evidence and was therefore correctly not accepted by the authorities. Lastly, the petitioner's contention that the brand was not a registered brand and therefore the petitioner had no liability to pay tax also was rightly not accepted. As pointed out by the counsel for the petitioner himself under a Notification dated 22.09.2017 issued by the Government of India, following amendment in the previous Notification was made:

"(v) in S. No. 49, in column (3), for the words "put up in unit container and bearing a registered brand name", the words brackets and letters "put up in unit container and,

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(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable

right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE]", shall be substituted;"

10. As per this amendment, thus, for the original expression of "put up in unit container and bearing a registered brand name" what is now substituted is that it should be put in unit container and may be bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available. Thus, from the previous requirement of supply of goods in unit container and bearing a registered brand name, the expanded requirement is of the same either bearing of registered brand name or bearing a brand name on which actionable claim or enforceable right in a court of law is available. Thus, the requirement of the brand name being registered is no longer necessary. This Notification itself, however, provides that the exemption could be availed where such actionable claim or enforceable right in respect of such brand name has been voluntarily forgone subject to the conditions specified in the Notification.

11. The brand names under which the petitioner was selling the rice may not have been registered, nevertheless it could lead to an actionable claim in a court of law. In order to avoid inviting liability of tax, the petitioner had to forgone such actionable claim which also the authorities found the petitioner had not done.

12. In the result, petition is dismissed. Pending application(s), if any, stands disposed of.

(S.G. CHATTOPADHYAY), J

(AKIL KURESHI), CJ

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