

Chief Justice's Court

Case :- WRIT TAX No. - 979 of 2023

Petitioner :- M/S Dharampal Satyapal Limited

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- A.S.G.I.,Dhananjay
Awasthi,Gaurav Mahajan

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Rahul Agarwal, learned counsel for the petitioner and Shri Gaurav Mahajan along with Shri Dhananjay Awasthi, learned counsel for the respondents.

2. The instant writ petition has been filed for declaring the decision taken in the GST Council Meeting dated 17.9.2021 and the subsequent clarification contained in the Press Release dated 17.9.2021 classifying "flavoured and coated illaichi" under heading 21:06 and attracting GST at the rate of 18% as also the Circular No. 163/19/2021-GST dated 6.10.2021 in so far as it classified coated illaichi under sub-heading 21:06 of the GST classification of goods to be ultra vires the provision of the CGST Act, 2017. Further prayers for quashing the show cause notice bearing file No.DGGI/INT/INTL/848/2021-Gr.-M-O/oDD-DGGI-RU-Udaipur / 714 dated 2.3.2023 as also the show cause notice bearing file No. DGGI/INT/INTL/848/2021-Gr.-M-O/oDD-DGGI-RU-Udaipur/713 dated 2.3.2023 and restraining the respondent No. 6 i.e. the Addl./Joint Commissioner (Adjudication) CGST, NOIDA from proceeding with the

adjudication has been claimed. Apart from the above, a writ of mandamus commanding the respondents to refund Rs.5.0 crores deposited by the petitioner under protest during the investigation along with interest has also been prayed for.

3. It is the case of the petitioner that it is engaged in the business of manufacturing, supplying and distribution of silver coated illaichi {under the brand name Rajnigandha Silver Pearls/RG illaichi (since 2013)}, Mouth Freshner {under the Brand name Pass Pass (since 1999)} and silver coated dates {under the brand name Tulsi Royal Khajoor (since 2018)}. The above products fall within the ambit of Chapter 20 of the GST Tariff/erstwhile Central Excise Tariff and attracted GST of 12% (CGST and SGST @ 6% respectively). It is further contended that even after the migration of the indirect tax regime to the GST regime the products of the petitioner continued to be classified under chapter 20 sub heading 20:08 of the GST schedule. However, the GST Council under its Council Meeting dated 17.9.2021 and consequential press release has proceeded to classify the products of the petitioner company to fall under Chapter 21 and attract 18% GST. It is submitted that the GST Council has no authority to change the classification of a commodity and increase the GST rate payable in respect of its supplies under a clarification. It is further submitted that the impugned circulars issued consequent to the recommendation/clarification by the GST Council in its 45th Meeting held on 17.9.2021 are without the authority of law and unwarranted.

It is submitted that during the investigations the petitioner has deposited a sum of Rs.5 crores under protest which is liable to be refunded to the petitioner with interest. However, the respondents are insisting for deposit of the balance amount of GST demanded under the impugned notices to the tune of Rs.25,36,60,985/- besides interest and penalty.

4. Matter requires consideration.

5. Learned counsel appearing for the respondents prays for and is allowed four weeks' time to file counter affidavit. Two weeks thereafter is granted to the petitioner to file rejoinder affidavit.

6. List this case after expiry of six weeks.

7. Considering the submissions advanced by learned counsel for the petitioner, as an interim measure, it is provided that the effect and operation of the Circular dated 6.10.2021 (Annexure 2 to the writ petition), impugned show cause notices bearing file No. DGGI/INT/INTL/848/2021-Gr.-M-O/o DD-DGGI-RU-Udaipur/714 dated 2.3.2023 and file No. DGGI/INT/INTL/848/2021-Gr.-M-O/oDD-DGGI-RU-Udaipur/713/ dated 2.3.2023 (Annexure 3 & 13 to the writ petition) shall remain stayed provided the petitioner deposits a sum of Rs.10 crores with the respondents within three weeks from today which shall be kept in a separate account and submits a bank guarantee of the balance amount other than cash within the same period. It is clarified that the adjudication proceedings may go on but shall not be given

effect to without the leave of the Court.

Order Date :- 21.8.2023

Ravi Prakash

(Ashutosh Srivastava, J.)

(Pritinker Diwaker, CJ.)