

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. Nos.12646 and 12647 of 2020

Tamil Nadu Co- operative Milk Producers
Federation Limited Represented
by its Managing Director Aavin Illam,
3a Pasumpon Muthuramalingam Salai,
Nandanam, Chennai 600 035.

...Petitioner in W.P. No.12646 of 2020

The Salem District Co operative Milk
Producers Union Limited
Represented by its Deputy General Manager,
Finance i/c Sithanur, Thalavaipatty,
Salem 636 302

Petitioner in W.P. No.12647 of 2020

Vs

1 Addl. Assistant Director DGGI
Coimbatore Zonal Unit, Office of the
Directorate General of GST Intelligence,
Coimbatore Zone unit,
No. 155-1, Lakshmanan Street, Ukkadam,
Coimbatore-6.

2 The Joint Commissioner of GST,
and Central Excise Madhavaram Division
2054 / 1 Newly Towers 1st Floor 12th Main Road,
2nd Avenue, Anna Nagar 600 040.

...Respondents in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying **Writ of Certiorarified Mandamus** to call for the records on the

files of the 1st Respondent herein in F.No. INV / DGGI / COZU / C / 14 / 2020 GST Din 202007DSS300006063D7 / 1431 dated 15.07.2020 and F.No. INV / DGGI / COZU / C / 06 / 2020 GST Din 202007DSS300004KC986 / 1430 dated 18.07.2020 quash the same while directing the Respondents to adjudicate the issue as regards the rate of tax to be applied on the sales of flavoured milk effected by the Petitioners during the period between November 2017 to December 2019 in terms of Section 73 of the Central Goods and Services Tax Act 2017

For Petitioner : Mr.B.Raveendran
For Respondents : Mr.V.Sundareswaran,
Senior Standing Counsel for R1
Mr.S.Rajasekar ,
Junior Standing Counsel for R2

COMMON ORDER

The petitioner has filed these writ petitions challenging communications issued by the Additional Assistant Director DGGI /R1 dated 15.07.2020 & 18.07.2020.

2. Mr.Sundareswaran, learned Senior Panel Counsel, who has entered appearance on behalf of R1 has filed a written memo to the following effect:

F.No.INV/DGGI/CoZU/C/06/2020-GST

Dated: 14.09.2020

*To
Shri V.Sundareswaran,
Senior Standing Counsel,
Hon'ble High Court of Madras*

Sir,

Sub: W.P. No.12646/20 filed by The Tamil Nadu Co-operative

Milk

Producers Union and No.12647/2020 filed by M/s The Salem District Co-operative Milk Producers Union Ltd.- Reg.

Please refer to your email dated 11.09.2020 informing W.P. No.12646 of 2020 filed by The Tamil Nadu Co-operative Milk Producers Union & W.P. No.12647/2020 filed by M/s. The Salem District Co-operative Milk Producers Union Ltd., Salem in the Hon'ble High Court of Madras and calling for clarification. It is informed that no communication dated 21.02.2020 has been made by this Office with either M/s Tamil Nadu Co-operative milk producers Union nor with M/s. The Salem District Co-operative Milk Producers Union Ltd.

2. In this regard, this Office has initiated investigation against M/s. The Salem District Co-operative Milk Producers Union Ltd., Salem, on the basis that they manufacture/supply beverage containing flavoured milk ready for consumption and are wrongly classifying the flavoured mil/milk shakes under HSN 0403 which attracts GST @ 5% instead of HSN 2202 99 30 that attracts GST @ 12%. Hence, an Authorisation dated 20.01.2020 for inspection in FORM GST INS-02 was issued by the Additional Director, Directorate General of GST Intelligence (DGGI), Coimbatore Zonal Unit under Section 67(1) of Central GST Act, 2017 to the additional Assistant Director, DGGI, Coimbatore Zonal Unit for conducting inspection at the premises of M/s The Salem District Co-operative Milk Producers Union Ltd., Salem. Accordingly, the inspection of the premises of M/s. The Salem District Co-operative Milk Producers Union Ltd., Salem was conducted on 22.01.2020. Mahazar dated 22.01.2020 was drawn on the spot.

3. Further Summons dated 22.01.2020 under Section 70 of Central GST Act, 2017 was issued by the Proper Officer viz., Additional Assistant Director to m/s. The Salem District CO-operative Milk Producers Union Ltd., Salem and the same was received by the DGM (Finance), M/s. The Salem District co-operative Milk Producers Union Ltd, Salem. A voluntary statement of DGM (Finance) was recorded on 22.01.2020, wherein he deposed inter alia that the differential GST amount for flavoured milk/milk shakes worked out Rs.2,14,26,618/- for the period 01.11.2017 to 21.01.2020. He further stated that in consultation with their auditors they have changed the GST HSN of flavoured milk/milk shakes to 0403 with GST @ 5% w.e.f. 01.11.2017 instead of 2202.

4. As the investigation is under progress, this office vide letters dated 15.07.2020 and 20.08.2020, requested M/s The Salem District Co-operative Milk Producers Union Ltd., Salem to intimate the details of differential GST payment mad in view of the voluntary

statement dated 22.01.2020 of DGM (Finance). After completion of investigation, a demand notice under Section 73 or 74 of CGST Act, 2017 will be issued by the proper officer.

5. As the investigation is under progress and no demand has been made. It is request that it may be prayed before the Hon'ble High Court of Madras for quashing the Writ petitions i.e., the W.P. No.12646 of 20 filed by the Tamil Nadu Co-operative Milk Producers Union and W.P. No.12647 of 2020 filed by M/s. The Salem District Co-operative Milk Producers Union Limited, Salem.

3. Thus it is clear that the impugned communication only solicits certain particulars from the petitioner and any further action in continuance thereof will be taken in accordance with law after hearing the petitioner. This is recorded. There is thus no basis for the apprehension expressed by the petitioner to the effect that demands would be raised on the basis of the impugned communication itself.

4. In the light of the aforesaid, these Writ Petitions are closed. No costs.

22.09.2020

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Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking Order

WEB COPY

To

- 1 Addl. Assistant Director DGGI
Coimbatore Zonal Unit, Office of the
Directorate General of GST Intelligence,
Coimbatore Zone, unit No. 155-1,
Lakshmanan Street, Ukkadam Coimbatore-6.
- 2 The Joint Commissioner of GST,
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