

GST applicable on Sale of Rice even if Brand Name not Registered: Tripura High Court

Fact of the Case

The Petitioner, M/S Sarvasiddhi Agrotech Pvt. Ltd. is a registered company and is engaged in the 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 in the 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 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 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 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 images 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.

The Assistant Commissioner of GST did not accept these defences of the petitioner and passed the impugned order 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 raids, 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. The division bench of Justices held that as per the 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 maybe 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 containers and bearing a registered brand name, the expanded requirement is of the same either bearing of a registered brand name or bearing a brand name on which actionable claim or enforceable right in a court of law is available. "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 forgo such actionable claim which also the authorities found the petitioner had not done," the court ruled.

Decision of the Case

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“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 forgo such actionable claim which also the authorities found the petitioner had not done,” the court ruled.

The Tripura High Court ruled that the GST applicable on Sale of Rice even if Brand name is not registered.