HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.666/2020

M/S Sarvasiddhi Agrotech Pvt. Ltd.

----Petitioner(s)

Versus

Union of India & others

-----Respondent(s)

For Petitioner(s)	: Mr. T.K. Deb, Advocate, Mr. N. Pal, Advocate.
For Respondents No.1 & 3	: Mr. Bidyut Majumder, Asst. S.G.
For Respondent No.2	: Mr. G.S. Bhattacharjee, Advocate.

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

Order

05/10/2020
(Akil Kureshi, C.J.)

Petitioner has challenged an order in original dated 03.07.2020 passed by the Assistant Commissioner of the Central Goods and Services Tax (CGST, for short), Tripura.

2. Brief facts are that the petitioner is a company registered under the Companies Act and is engaged in manufacturing, packaging and supply of Non-Basmati rice. On 17.07.2018 the CGST officers visited the premises of the petitioner and seized 3204 rice bags under a seizure memo. On the

premise that the petitioner had evaded payment of GST, the department issued a show-cause notice dated 12.03.2019. Case of the department was that the petitioner was selling packaged marked rice with registered trademark which activity, after 22.09.2017 was subject to Central as well as State GST which the petitioner had not paid. Under the show-cause notice, therefore, the petitioner was called upon to state why the unpaid GST not be recovered from the petitioner on the seized value of the rice stock as well as on the sale of rice with registered trademark for the period between 22.09.2017 till the date of seizure i.e. 17.07.2018.

3. The petitioner opposed such proposals. The main ground of the petitioner was that till 22.09.2017 supply of rice did not invite any GST. Post 22.09.2017 GST was levied only on the supply of packaged marked rice with registered trademark in which the petitioner was not engaged. The petitioner was not selling packaged marked rice with registered trademark. With respect to the contention of the department that at the time of the seizure the stock was separated into different categories such as, Aahar Normal, Aahar Gold and Aahar Premium, according to the petitioner, the same was done only for the internal purposes. With respect to finding rice bags with packaged markings, the petitioner put up a difference that the same was being supplied prior to 22.09.2017. Some old stock was returned

due to quality disputes which were lying in the godown of the petitioner and that in any case, after 22.09.2017 when GST was introduced on sale of rice with packaged marking of registered trademark, the petitioner had discontinued sale of such rice.

4. The adjudicating authority passed a detailed speaking order under which he held that the petitioner was liable to pay Central as well as State GST on sale of rice which was supplied in marked packages with registered trademark and which sale took place after 22.09.2017. Since the petitioner had not paid such taxes, he confirmed the demand for payment of tax with interest and penalty. He offered an option to the petitioner to pay reduced penalty provided the petitioner accepts the demand for payment of tax with interest.

5. It is this order which the petitioner has challenged in the present petition. Having heard learned counsel for the petitioner and having perused the documents on record, we are not inclined to entertain this petition on the short ground of availability of alternative remedy. It is undisputed that against the impugned order statutory appeal is available. It is well settled through series of judgments of the Supreme Court and various High Courts that in taxing statutes where the orders passed by the competent authority are subjected to appeal mechanism, interference by the High Court in a writ

petition without the aggrieved party having exhausted such alternative remedy would be exceptional and on certain well recognized grounds such as, lack of jurisdiction or breach of principles of natural justice. In the present case, the order in original is appealable and eventually if the assessee is aggrieved by such appellate order also, further appeal would be available before the High Court. The Tribunal of GST is considered the final fact finding authority against whose decision appeal would lie before the High Court on substantial question of law. In the present case, we do not see any reason whatsoever why such mechanism contained in the statute should be dismantled and the petitioner should be allowed to bypass the appeal route and approach the High Court directly in a writ petition. These aspects are discussed at length by the Supreme Court in case of ***Chhabildas Agarwal*** reported in ***357 ITR 357.***

6. In the present case, the petitioner has raised number of disputed questions of facts about the nature of its activities and the manner in which the petitioner was selling rice after 22.09.2017. It is not possible for this Court, nor even necessary to examine these disputed questions of facts acting as a first appellate authority in a writ petition. For example, the petitioner, as noted, had contended that the segregation of the stock of rice in different qualities was for internal purpose and not for marking at the time of

sale. When the raiding party had found stock of packaged rice carrying registered marks, the defence of the petitioner was that the same was old stock sold prior to 22.09.2017 but returned due to quality disputes which was still lying in the godown. We are not commenting on whether such defences are genuine or not. But what we are commenting on is that these are highly disputed questions of facts which must be examined by the appellate authority and not by the Court in a writ petition.

7. The order passed by the adjudicating authority takes to account the background of the case, refers to the case of the department in issuing of notice, records the stand of the petitioner in opposition, records in detail the contentions of the petitioner during personal hearing and thereafter records his own reasons for the conclusions. The order thus is a speaking order and cannot be criticized by suggesting that no reasons are recorded or that it is a non-speaking order.

8. Counsel for the petitioner had also argued that the cross-examination of witnesses who had signed the seizure memo was not allowed though asked for. It is true that cross-examination of the witnesses which the department relies upon in the departmental proceedings should almost invariably be granted. That is how the law has been developed. However, before the order in original can be quashed on the ground of breach of this

requirement, two things have to be ascertained. Firstly, does the department rely on these witnesses to further its case? And secondly, can this breach leads to the order being vitiated? In other words, if its effect is such that a part of the order of the competent authority which has been tainted on account of this breach, is severable and insofar as his foundational findings are concerned, the same still be maintained, it may not be necessary to set aside the entire order only on this ground. We have made these remarks, particularly since the petitioner does not seem to have disputed the seizure of certain stock of rice bags, including the bags carrying registered trademarks. However, all these aspects must be gone into by the appellate authority and cannot be examined in a writ petition at the first instance.

9. For all these reasons, petition is dismissed. However, it is clarified that the appellate forum, if the petitioner files appeal within a period of two weeks from today, shall entertain the same on merits without raising a question of limitation, if any and decide the appeal without being influenced by any of the observations made in this order.

10. Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J **(AKIL KURESHI), CJ**

Pulak