



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19190 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA Sd/-

and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

M/S DHARTI INDUSTRIES
 Versus
 OFFICE OF COMMISSIONER (APPEAL) & ORS.

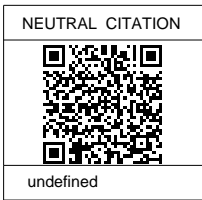
Appearance:

MR AMAN MIR(10881) for the Petitioner(s) No. 1
 MR RUTVIK P PATEL(11688) for the Petitioner(s) No. 1
 MS HETVI H SANCHETI(5618) for the Respondent(s) No. 2
 NOTICE SERVED for the Respondent(s) No. 1,3

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 12/09/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)



1. Heard learned advocate Mr. Aman Mir for the petitioner and learned Advocate Ms. Hetvi H. Sancheti for the respondent no.2.

2. Though served no one appears for the respondent no.1 and 3. Rule returnable forthwith. Learned Advocate Ms. Sancheti waives service of notice of Rule for respondent no.2.

3. Having regard to the controversy involved which is in a narrow compass, with the consent of learned advocates for the respective parties, the matter is taken up for hearing.

4. By this petition under Article 227 of the Constitution of India, the petitioner has



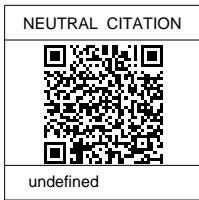
prayed for the following reliefs:

“(a) quash and set aside the impugned Order in Appeal No. AHM - CGST-003-APP-ADC-85/2022-23 dated 11/01/2023 (Annexure B) well as the impugned Order in Original No.01/RM/SUPDT/GST/2021-22 dated 29/03/2022 (Annexure C) along with the Notice No.F.NO.III/(20)1648/2021-CGST-RANGE-1-KADI COMMISSIONERATE GNR dated 24/01/2023 (Annexure A) and all the related GST Audit Reports;

(b) pending the admission, hearing and final disposal of this petition, stay the implementation and operation of the impugned Order in Appeal No. AHM-CGST-003-APP-ADC-85/2022-23 dated 11/01/2023 (Annexure B) as well as the impugned Order in Original No. 01/RM/SUPDT/GST/2021-22 dated 29/03/2022 (Annexure C) along with the Notice No. F.NO.III/(20) 1648/2021-CGST-RANGE-1-KADI COMMISSIONERATE GNR dated 24/01/2023 (Annexure A) and all the related GST Audit Reports;”

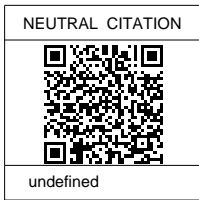
5.The brief facts of the case are as under:

5.1. The petitioner is a partnership firm



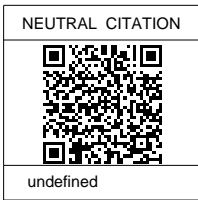
having registration number under GST and is engaged in manufacturing activity of extracting cotton seed oil cake from cotton seeds and supplying the same to the customers. In the process of extracting cotton seed oil from cotton seed, the cotton seed oil cake (commonly known as "KHOL" in the open market of Gujarat) is produced as bi-product, which according to the petitioner is used as cattle feed having no other commercial use.

5.2. It is the case of the petitioner that under the VAT 2003 that is "Pre GST era". the sale of cotton seed oil cake was exempted from levy of the tax as the same was used as cattle feed and after coming into force of the GST with effect from 01.07.2017, according to the petitioner,



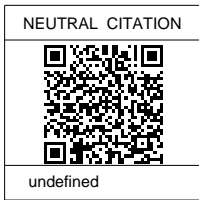
the cotton seed oil cake being used as cattle feed was entitled to exemption vide Entry no.102 of Notification no.2 of 2017 dated 28.06.2017 and accordingly, the petitioner continued to avail exemption on inward and outward supplies of cotton seed oil cake as cattle feed.

5.3. It appears that during the course of audit of financial records of the petitioner, audit objections were raised by the Respondent no.3 that during the period from 01.07.2017 to 29.09.2017, if the supply of the cotton seed oil cake is for cattle feed then only the exemption can be claimed and it was found that the petitioner had supplied cotton seed oil cake to the traders which amounted to supplies for the purpose of trading or for



further supplies and not for cattle feed and the petitioner failed to establish that supplies of the cotton seed oil cake were used for cattle feed and thus, wrongly availed the exemption under Entry No.102 of Notification No.2 of 2017. It was therefore concluded by the audit objections that the petitioner has short paid the GST on cotton seed oil cakes under the Reverse Charge Mechanism under Section 9(4) of the GST Act.

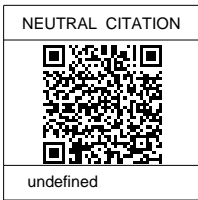
5.4. The respondent no.2 therefore on the basis of such audit objections issued show-cause notice dated 18.02.2021 calling upon the petitioner as to why the petitioner would not be liable to pay the tax on the supply of cotton seed oil cake valued at Rs.61,10,724/- as the same would



be for the trading purpose.

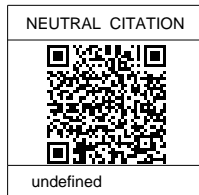
5.5. The petitioner thereafter filed reply to the show-cause notice contending *inter alia* that the petitioner has sold cotton seed oil cake for cattle feed only and it is not for the petitioner to ascertain the end use of such supply and therefore, the petitioner has rightly availed exemption from payment of GST by treating the supply of cotton seed oil cake as cattle feed vide Entry No.102 of Notification No.2 of 2017.

5.6. However, the respondent no.2 after considering the reply of the petitioner passed the Order-in-Original dated 29.03.2022 confirming the levy of GST upon supply of cotton seed oil cake.



5.7. Being aggrieved, the petitioner preferred an appeal before the Appellate Authority i.e. Respondent no.1 herein objecting to levy of GST on the supply of the cotton seed oil cake on the ground of the same being exempt under Entry No.102 of Notification No.2 of 2017.

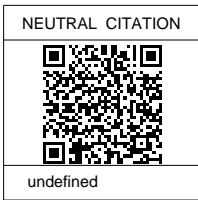
5.8. The petitioner also raised an objection that with effect from 22.09.2017 as per the Notification No.28 of 2017 vide Entry No.102A, the cotton seed oil cake was also made eligible for exemption as per the recommendations made by the GST Council in its 21st meeting held on 09.09.2017. The Appellate Commissioner however while recording the fact that the cotton seed oil cake is used as cattle



feed but in view of the Notification dated 22.09.2017 came to the conclusion that the same would not be applicable retrospectively with effect from 01.07.2017 and hence the petitioner would be liable to the levy of GST from 01.07.2017 to 21.09.2017.

5.9. Being aggrieved, the petitioner has preferred this petition challenging the order of the Appellate Authority in absence of GST Tribunal.

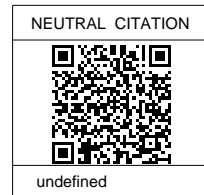
6. Learned advocate Mr. Aman Mir for the petitioner submitted that the petitioner has done trading of cotton seed oil cake to be used as a cattle feed only and as there is no denial either by the Audit Party or by the Respondent No.2 with



regard to the use of cotton seed oil cake produced as bi-product by the petitioner to be used as cattle feed. It was submitted that the end use of the product is not relevant as the petitioner has traded in cotton seed oil cakes for the purpose to cattle feed only.

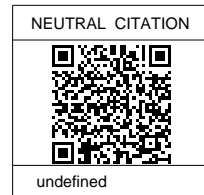
6.1. In support of his submissions, reliance was placed on the decision of the Hon'ble Supreme Court in case of ***Commissioner of Central Excise Vs. Gopsons Papers Limited and Another*** reported in **(2015) 17 SCC 176**, wherein the Hon'ble Apex Court has held as under:

"4. It is clear from the above that insofar as the assessee is concerned, it is undertaking the work of printing alone and is supplying to those who place orders in this behalf. The end



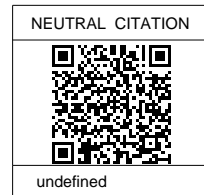
use of the said product at the hands of the purchaser is not the concern of the assessee and cannot be the consideration for classifying the goods in question. It is the respondent which is to be assessed under the Central Excise Act and it has to pay the excise duty on the manufacturing process undertaken by it."

6.2. It was further submitted that as per the Notification No.28 of 2017 dated 22.09.2017, the insertion of Entry No.102A would relate back to the exemption from the inception and the Appellate Authority was not justified in restricting or applying such notification from the date of publication by relyin upon Section 9 of the GST Act. It was submitted that it is true that the rate of GST to be applied from the notification but when the exemption is granted on the specific item



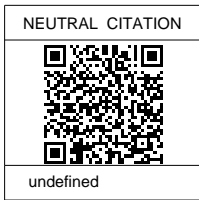
the same would apply from the date of exemption notification.

6.3. It was further submitted that Entry No.107 of the exemption notification was modified accordingly by separate Notification No.27 of 2017 whereby in column No.3 of serial no.107 of Notification No.2 of 2017, the cotton seed oil cake was excluded from the entry from cattle feed. It was pointed out that the Serial No.107 in column no.(3), for the words "other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake", the words "other than cotton seed oil cake", shall be substituted."



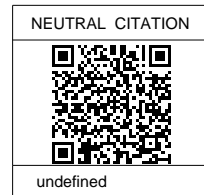
6.4. It was therefore submitted that the Notification No.28 of 2017 by inserting Entry No.102A would be operative from 01.07.2017 only. It was submitted that the applicability of Notification No.28 of 2017 is only on the alternative as the case of the petitioner is that the supply of cotton seed oil cake is part of the cattle feed and would be covered by Entry No.102 only.

7. On the other hand, learned advocate Ms. Hetvi Sancheti for the respondent submitted that as per the objection raised during the course of audit, the Adjudicating Authority has rightly considered the use of the cotton seed oil cake supplied by the petitioner. It was

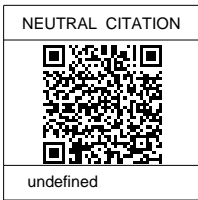


pointed out that the petitioner has failed to submit that the cotton seed oil cake sold by the petitioner was used for cattle feed. It was also pointed out that the petitioner has supplied the cotton seed oil cake to various GSTIN holders who are the traders and therefore, it is the fact that the petitioner has never supplied cotton seed oil cake as cattle feed. It was therefore submitted that for the period from 01.07.2017 till 21.09.2017, the petitioner was liable to levy of GST at the rate of 5% as per Notification No.1 of 2017.

8. Having heard learned advocates for the respective parties and considering the facts of the case, it appears that the petitioner was not liable to pay the VAT

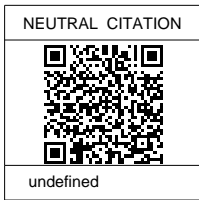


into Pre-GST Regime on the sale of cotton seed oil cake as the same was exempted as cattle feed. The GST Act has subsumed the earlier VAT Act and as per the Entry No.102 of Notification No.2 of 2017, it clearly provides for exemption to levy of GST on cattle feed. Even on perusal of the show-cause notice, it is revealed that the respondent Authority has reproduced objections raised by the Audit Party which clearly shows that the Audit Party while considering the replies made by the petitioner during the course of Audit and deliberations on the issues though recorded that the petitioner was not able to prove or state the status of the cotton seed oil cake purchasers with GSTIN but such purchasers also declined to pay up the tax on such outward supplies with the



contention that since end use of the cotton seed oil cakes is only for cattle feed the product has to be exempted, meaning thereby that the merely the supply of the cotton seed oil cake to the traders would not determine the levy of GST as end use of cattle feed is not in dispute. The Hon'ble Supreme Court in case of **Gopsons Papers Limited (Supra)** has therefore, in such circumstances in the facts of the said case held that end use of the product at the ends of the purchaser is not the concern of the assessee and cannot be the consideration for classifying the goods in question.

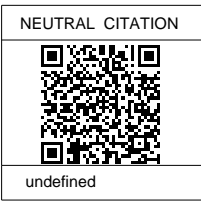
9. We are therefore of the opinion that in the facts of the case when the petitioner has made supply of the cotton seed oil



cake as cattle feed, the petitioner was entitled to exemption under Serial No.102 of Exemption Notification No.2 of 2017.

10. In view of such findings we are not analyzing the applicability of the Notification No.28 of 2017 retrospectively or prospectively as supply of cotton seed oil cake would be exempted as cattle feed from 01.07.2017 and more particularly, from 22.09.2017 as per the Entry No.102A of the Act.

11. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders dated 11.01.2023 passed by the Adjudicating Authority as well as order dated 29.03.2022 passed by the Appellate



Authority are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

Sd/-
(BHARGAV D. KARIA, J)

Sd/-
(NIRAL R. MEHTA, J)

URIL RANA

