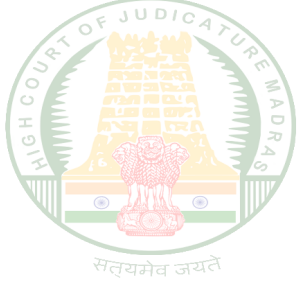




IN THE HIGH COURT OF JUDICATURE AT MADRAS



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Reserved On	12.02.2026
Pronounced On	16.03.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6069 of 2025

and

W.M.P.No.6668 of 2025

M/s.Narasus Saarathy Enterprises Private Limited,
Rep. by its Chairman, Mr.Balasubramaniam M.V.
#16A, Court Road, 'Narasus'.
Johnsonpet,
Salem, Tamil Nadu – 636007.

... Petitioner

Vs.

1. The Additional Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.

2. The Joint Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for
issuance of a Writ of Certiorari, calling for the records of the impugned
Order-in-Original No.16/2025-GST (ADC) [DIN No.



W.P.No.6069 of 2025

20250159XP0000440204] for the consolidated period of five Financial Years viz. 2017-18 to 2021-22 till July, 2022, under Section 74 of the CGST/TNGST Act, 2017 and uploaded the same along with the summary of order in DRC07 from the files of the first respondent herein, quash the same.

For Petitioner : M/s.Aparna Nandakumar

For Respondents : Mr.Sai Srujan Tayi
Senior Standing Counsel

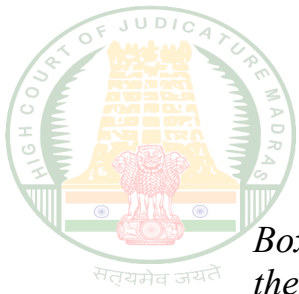
ORDER

In this Writ Petition, the petitioner has challenged the impugned **Order in Original No.16/2025-GST** dated **30.01.2025**. By the impugned order, the demand proposed in the Show Cause Notice No.18/2024-GST-JC which was accompanied with a summary in Form GST DRC-01 both dated 01.08.2024 for the tax period from 01.07.2017 to 31.07.2022 has been confirmed against the petitioner.

2. Relevant portion of the aforesaid Show Cause Notice dated 01.08.2024 is reproduced below:-

“12. Demand of tax/wrongly availed ITC, interest and penalty:

Now, therefore, M/s. Narasu'sSaarathy Enterprises Pvt., Ltd., (GSTIN 33AADCN9472H2Z8), 16-A, Court Road, Johnsonpet, Post



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Box No. 725, Salem-630 007 are hereby required to show cause to the Joint/ Additional Commissioner of GST & Central Excise, No. 1. Foulkes Compound, Anai Road, Salem-636001 within 30 days from the date of receipt of this notice, as to why:

i. the GST amount of Rs.12,65,31,070/- (IGST Rs. 1,76,89,478/-, COST Rs.5.44.20,796/ SGST- Rs. 5,44,20,796/-) (Rupees twelve crore sixty five lakhs thirty one thousand and seventy Only) being supply of their "Registered Brand" goods under the guise of "Unbranded" goods for the period from 01.07.2017 to 31.07.2022 should not be demanded from them under Section 74(1) of the CGST Act, 2017/TNGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017:

ii. the appropriate Interest as per Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 on the GST amount demanded at Sl.No. (i) above, should not be demanded from them under Section 74(1) of CGST Act, 2017 /TNGST Act, 2017 made applicable to IGST vide Section 20 of IGST Act, 2017;

iii. a penalty should not be imposed on them under Section 122(2)(b) of the CGST Act, 2017/TNGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 read with Section 74(1) of the CGST Act, 2017 / TNGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017, for the contravention stated supra.

13. As provided under Section 74(8) of the CGST Act, 2017, if the Taxpayer pays the tax demanded above along with interest payable under Section 50 of the CGST Act, 2017 and penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of this show cause notice, all proceedings in respect of this notice shall be deemed to be concluded.

14. The tax payer is further required to produce at the time of showing cause all the evidence upon which they intend to reply in support of their defence and to state in their written reply as to whether they wish to be heard in person or through their authorized



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representative, before the case is adjudicated, failing which, it would be construed that they do not desire a personal Hearing.

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15. If no cause is shown against the action proposed to taken within 30 days from the date of receipt of this Notice or having shown cause if they do not appear personal hearing before the adjudicating authority on the date and time of hearing, the case will be decided 'Ex-parte' on the basis of evidences available on records.

16. This show cause notice is issued without prejudice to any other action that may be or has already been initiated against the noticee either under the IGST Act,2017/CGST Act,2017/TNGST Act, 2017 and Rules made there under or any other law for the time being in force and enforceable in India.

17. The Department reserves the right to add, amend, delete or modify any part or portion of this Show Cause Notice, if considered necessary at any point of time before the case is adjudicate and such addition, amendment, deletion or modification shall be deemed to be part and parcel of this Notice.

18. The following documents are relied upon in the present matter:

i. Complaint preferred against Narasus Sarathy Enterprises Private Limited, Salem received on 10.01.2022

ii. Statement dated 12.05.2022 of Shri.M.V.Balasubramaniam, Chairman of M/s Narasus Saarathy Enterprises Private Limited, Salem.

iii. Letter dated 25.05.2022 with submission of Sales Details of Taxable and Non-Taxable for the period from 01.07.2017 to 31.03.2022 by M/s Narasu's Saarathy Enterprises Private Limited, Salem.



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iv. Letter dated 19.08.2022 furnishing certain information regarding sale of branded as unbranded by M/s Narasu's Saarathy Enterprises Private Limited, Salem.

v. Letter dated 03.06.2022 submission of Copy of ST GST affidavit by M/s Narasu's Saarathy Enterprises Private Limited, Salem.

vi. Letter dated 22.02.2023 furnishing of GST Certain documents /information of branded, exempted and unbranded goods sold during the period April-2022 to July-2022 by M/s Narasu's Saarathy Enterprises Private Limited, Salem.

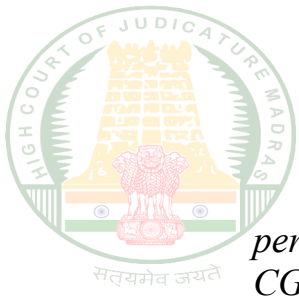
vii. GSTR-3B Returns filed by the Taxpayer for the impugned period.

viii. GSTR-9 Annual Returns filed by the Taxpayer for the impugned period.”

3. Operative portion of the impugned order dated 30.01.2025 confirming the demand proposed in the aforesaid Show Cause Notice in Form GST DRC-01 dated 01.08.2024 against the petitioner is reproduced below:-

“20. Accordingly, in view of the above discussion and findings I pass the following order: -

a. I demand the GST amount of Rs.12,65,31,070/- (IGST – Rs.1,76,89,478/-, CGST – Rs.5,44,20,796/- & SGST – Rs.5,44,20,796/-) (Rupees twelve crore sixty-five lakhs thirty one thousand and seventy only) being supply of their “Registered Brand” goods under the guise of “Unbranded” goods for the



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period from 01.07.2017 to 31.07.2022, under Section 74(9) of CGST Act, 2017/TNGST Act, 2017 made applicable to IGST vide Section 20 of IGST Act, 2017.

b. I demand the appropriate Interest on the demand at S.No.(i) above, under Section 74(9) of CGST Act, 2017/TNGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017, read with Section 50 of the CGST Act, 2017.

c. I impose a penalty of Rs.12,65,31,070/- (IGST – Rs.1,76,89,478/-, CGST – Rs.5,44,20,796/- & SGST – Rs.5,44,20,796/-) (Rupees twelve crore sixty-five lakhs thirty-one thousand and seventy only) on M/s. Narasu's Saarathy Enterprises Pvt., Ltd., equivalent to the demand at S.No.(i) above, under Section 122 (2)(b) of the CGST Act/TNGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017, read with Section 74 of the CGST Act, / TNGST Act, 2017 made applicable to IGST as per Section 20 of the IGST Act, 2017”

4. Discussion leading to the denial of exemption under **Serial Nos.73 and 74 to Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** as amended by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** on the specified goods supplied by the petitioner in the impugned order is extracted below:-

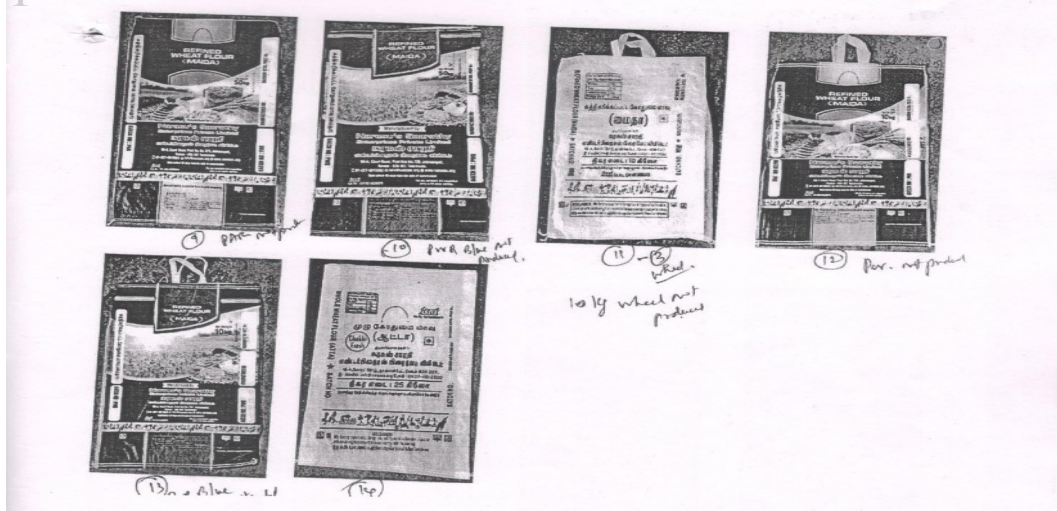
“5.Discussion and analysis

5.1 On verification of the packing materials which were used for supply of unbranded goods, it is observed that there is a series of cartoon characters picturizing the sowing and planting of crops and grown crop of cereals which is also used in their packing materials of registered brands as reproduced below.

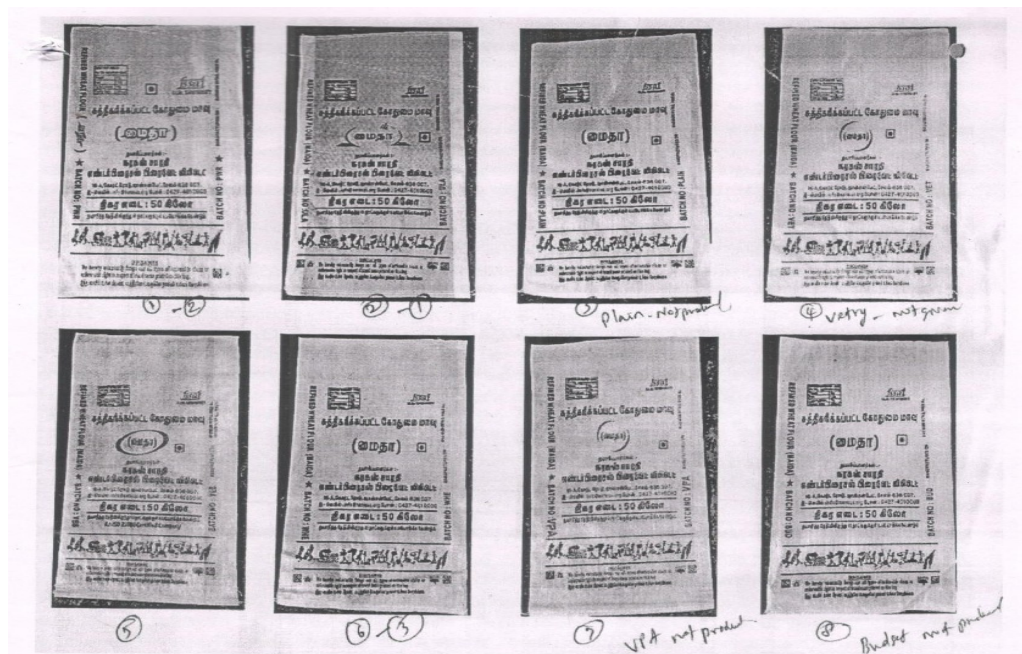


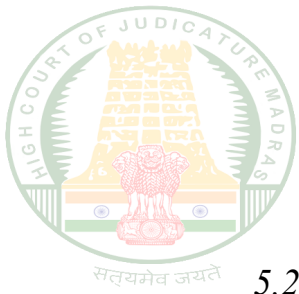
Images on Packing Material of Branded products: (Image 1)

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Images on Packing Material of Un-Branded products: (Image 2)





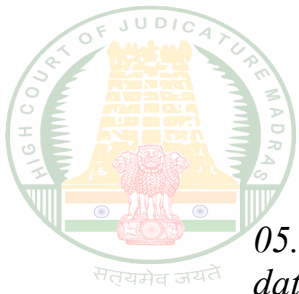
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5.2 *The pattern which is depicted above is printed on all of their packing materials i.e., branded and well as unbranded, is unique and conveys the meaning to the customers that these products are from M/s Narasu's Saarathy Enterprises Pvt Ltd.*

5.3 *Also, it is observed that the "water mark" behind the name of the products "Maida" and Bracket (), oval circle used in the branded packing materials are similar to the unbranded packing materials. The colour and font printed in the packing material of the branded goods are similar to the unbranded packing materials. The Batch Numbers are printed in unbranded packing materials as ULA, PWR, WHE, BUD, PLAIN, VET, YES, VPA, PWB, PWR which are similar to the branded packing materials "NARASU'S ULAASH", "NARASU'S POWER", "NARASU'S WHEEL", "NARASU'S BUDGET", "NARASU'S VETRY", "NARASU'S 'S'", "NARASU'S VPA", "NARASU'S POWER BLUE", "NARASU'S POWER RED", respectively. These abbreviations ULA, PWR, WHE, BUD, PLAIN, VET, YES, VPA, PWB, PWR are not only Batch Numbers but used for marketing their products in the above-mentioned brand names. Normally the Batch Numbers are not permanently printed in the packing materials but are affixed after/during packing of products only.*

5.4 *In some of the unbranded goods they use a part of registered Brand symbol/names viz., & in their unbranded packing materials for packing of "Whole Wheat Flavor (Aatta)" & "Refined Wheat Flour (Maida) respectively. The comparison of Branded and Unbranded packing materials is placed in the images above. Apart from the above the tax payer mentioned the name of the manufacturer as "NARASU'S SAARATHY ENTERPRISES PRIVATE LIMITED" which covers the registered and most prominent brand name "NARASU'S".*

05.05 *The taxpayer is using the particular series of cartoon pictures, same colour, font, water mark, part of brand name along with the name of the manufacturer as "NARASU'S SAARATHY ENTERPRISES PRIVATE LIMITED" in both the Branded and Unbranded packing materials.*



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05.06. As per the explanation to Notification No. 02/2017 CT (Rate) dated 28.06.2017 as amended vide Notification No.28/2017 CT (Rate) Dated 22.09.2017 “brand name” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and same person using such name or mark with or without any indication of the identity of that person. As explained above, the symbol, mark, font, colour indicating the connection with M/s Narasus Saarathy Enterprises Pvt Ltd., is prevalent in all the packing materials used for clearance of unbranded goods produced by them.”

FACTS OF THE PRESENT CASE:-

5. The petitioner is a private limited company carrying on the business of manufacture and sale of wheat products namely, Atta, Maida, Sooji and Bran etc under the Trade Name of the petitioner.

6. The petitioner supplied these wheat products such as Atta, Maida, Sooji and Bran etc in packed unit containers bearing its registered Trade Mark/Brand Name of the petitioner such as Narasu’s, Narasu’s Power, Narasu’s Ulaash, Narasu’s Vetry, Narasu’s Wheel, Narasu’s ‘S’ and Narasu’s Budget etc.

7. There is no dispute that the petitioner had paid tax at 5% under the

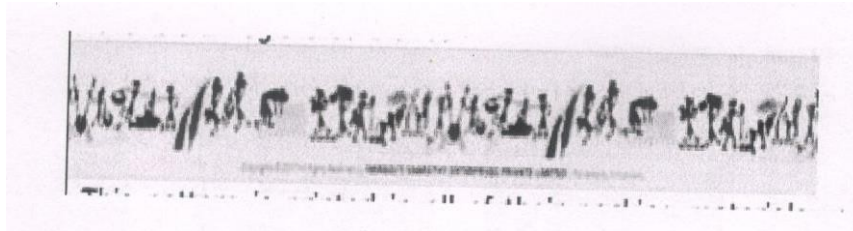


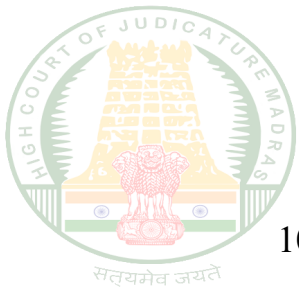
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respective GST Enactments on these branded goods in terms of **Notification No.02/2017 CT (Rate)** dated **28.06.2017** as amended by **Notification No.28/2017- Central Tax (Rate)** dated **22.09.2017**.

8. The petitioner had also effected supply of such wheat products namely, Atta, Maida, Sooji and Bran packed in unit containers without its registered Brand Name in the local market and claimed tax exemption for such sale of unbranded goods in terms of **Serial Nos.73 and 74 of Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** as amended by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**.

9. These unit containers used for the sale of unbranded goods contained the following graphic pictorial representation of farmers with agricultural implements which were common in unit containers used for branded goods:-





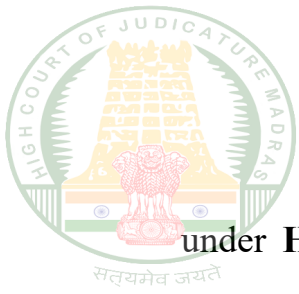
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10. The petitioner had given up its rights over its Brand Name and the above graphic pictorial representation of farmers with agricultural implements in terms of **Serial Nos.73 and 74 of Notification No.2/2017-Central Tax (Rate)** dated **28.06.2017** as amended by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** and thus paid 'nil' duty on the larger unit packs of unbranded goods.

11. Since these packaged food products were governed by the provisions of the Legal Metrology Act, 2009 and by the provision of the Food Safety and Standards Act, 2006 (FSSA), the petitioner declared its corporate name on the unit pack.

12. The respondent however found the petitioner violating the above Notification as amended by the aforesaid subsequent Notification to deny the exemption. Earlier, search was conducted at the premises of the petitioner on 12.05.2022, pursuant to which the above Show Cause Notice in FORM GST DRC-01 was issued to the petitioner under Section 74 of the respective GST Enactments for the tax periods 2017-2018 to 2021-2022 stating that the petitioner had wrongly claimed the benefit of the above exemption under the aforesaid Notification for sale of goods bearing "branded goods" falling



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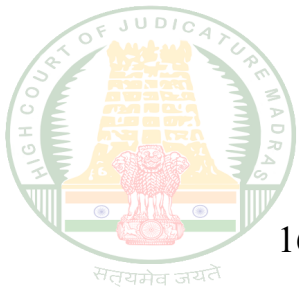
under **Heading 1101** and **1102** of the Customs Tariff Act, 1975 as made applicable for determination of rate under the respective GST Enactments.

13. It is in this background the impugned order was passed invoking the extended period of limitation under Section 74 of the respective GST Enactments confirming demand and penalty for the aforesaid tax periods, the operative portion of which has been extracted above.

SUBMISSIONS OF THE PETITIONER:-

14. The impugned order is primarily challenged on the ground that no case has been made out by the Respondent for invoking the extended period of limitation under Section 74 of the respective GST Enactments to pass the impugned order confirming the demand against the petitioner for the aforesaid tax periods.

15. In this connection, it is further submitted by the learned counsel for the petitioner that neither the petitioner nor the respondent entertained any doubt regarding the claim of exemption under **Serial Nos.73** and **74** of **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** all along.



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16. It is also submitted by the learned counsel for the petitioner that the inspection at the petitioner's premises took place on 12.05.2022. However, the Show Cause Notice was issued only on 01.08.2024 for the tax periods 01.07.2017 to 31.07.2022.

17. Adding further, the learned counsel for the petitioner submitted that pursuant to the petitioner's place of business being inspected as early as on 12.05.2022, the petitioner submitted a reply dated 25.05.2022. It is submitted that despite inspection and reply, the petitioner was permitted to continue availing the benefit of exemption under Notification **Serial Nos.73 and 74 of Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** as was amended by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**.

18. It is therefore submitted by the learned counsel for the petitioner that no case is made out to conclude that there was any suppression of facts to justify the invocation of Section 74 of the respective GST Enactments for the aforesaid tax periods by the Respondent.

19. Specifically, it is submitted by the learned counsel for the petitioner that the petitioner entertained a bona fide belief that the sale of food items,



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namely unbranded whole Wheat Atta, Maida, etc., without the use of the petitioner's 'registered brand name' was exempted in terms of **Serial Nos.73 and 74 of Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** and later in terms of the amendment to it vide **Notification No.28/2017- Central Tax (Rate)** dated **22.09.2017**.

20. The learned counsel for the petitioner, in reply, drew the attention of this Court to Paragraph No.16.8.2 of the impugned order, wherein observations were made as follows:-

“16.8.1....A “house mark”, while often used to signify the manufacturer’s identity, still functions as a brand identifier under GST if it is registered and legally recognised as such. Further, I also would like to mention the Judicial precedents, such as Astra Pharmaceuticals Pvt Ltd Vs. Collector of Central Excise and Louise Vuitton India Pvt Ltd Vs. Commissioner of Central Excise, support the view that a house mark can indeed create a brand association, qualifying the goods as “branded good” for GST purposes”

21. It is further submitted by the learned counsel for the petitioner that to the extent the petitioner had made small retail sales of goods that were meant to be sold with the brand name, the petitioner had discharged tax at 5% in terms of **Notification No.28/2017- Central Tax (Rate)** dated **22.09.2017**.



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WEB COPY22. It is submitted by the learned counsel for the petitioner that since the petitioner genuinely believed that its products were exempt from tax under **Serial Nos.73 and 74 of Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** as amended by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**, the invocation of the extended period of limitation was without any merits.

23. In this connection, the learned counsel for the petitioner submitted that pursuant to the above amendment to **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** vide **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**, the petitioner had also given up the “actionable claim” or “enforceable right” in respect of the said brand name depicted in the unit containers for larger quantity of products, even if it was assumed that the petitioner had indeed used a part of the brand name, namely, the pictorial/graphic representation of "Farmers", which are used commonly both along with various registered brand names/trade marks of the petitioner mentioned above.

24. It was further submitted by the learned counsel for the petitioner



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that as early as on 24.01.2018, the petitioner had also filed **Annexure - I**, as

is contemplated under Notification No.28/2017 - Central Tax (Rate) dated 22.09.2017 and that the petitioner was under a bona.fide belief that insofar as Atta, Maida and Sooji which were packed in unit containers and bear the registered brand name of the petitioner, the petitioner had rightly claimed the benefit of exemption under **Serial Nos.73 and 74 of Notification No.2/2017- Central Tax (Rate) dated 28.06.2017** as was amended by **Notification No.28/2017 - Central Tax (Rate) dated 22.09.2017**.

25. The learned counsel for the petitioner further submitted that the petitioner had only depicted generic graphics, representing farmers on the packaging of its products, which were commonly used in all containers in respect of which exemption was claimed. It was contended that the containers did not bear any registered brand name and therefore, the benefit of **Serial Nos.73 and 74 of Notification No.2/2017- Central Tax (Rate) dated 28.06.2017** as was amended by **Notification No.28/2017 - Central Tax (Rate) dated 22.09.2017** was rightly claimed by the petitioner.

26. The learned counsel for the petitioner further submits that there is a clear disclaimer with respect to the above pictorial/graphic representation of



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farmers with their agricultural implements, to show that the petitioner was entitled to exemption under the above Notification. Therefore, it is submitted that the impugned order is liable to be interfered with.

27. It was further submitted by the learned counsel for the petitioner that the petitioner was acting under a bona fide belief that it was entitled to the benefit of **Serial Nos.73 and 74 of Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** as was amended by **Notification No.28/2017 - Central Tax (Rate)** dated **22.09.2017** and consequently, the extended period of limitation under Section 74 of the respective GST Enactments was not justified.

28. It is therefore submitted by the learned counsel for the petitioner that the petitioner cannot be accused of suppression or of any of the other ingredients contemplated under Section 74 of the respective GST Enactments.

29. As far as bunching of the demand for the five-year tax period from 01.07.2017 to 31.07.2022 in the Show Cause Notice which has been confirmed by the impugned order is concerned, the learned counsel for the



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petitioner also submits that the petitioner was regularly filing returns under the provisions of the respective GST Enactments within the time period prescribed under the notifications issued thereunder.

30. It is submitted by the learned counsel for the petitioner that the respective GST Enactments do not permit bunching of the demand. It is further submitted that Section 74 of the respective GST Enactments is structured in a particular manner. The learned counsel for the petitioner therefore submits that bunching of demand for the aforesaid tax period in a single Show Cause Notice is impermissible.

31. It is further submitted by the learned counsel for the petitioner that the respondent had an avenue to issue a Show Cause Notice under Section 73 of the respective GST Enactments then and there within the period of limitation prescribed. It is therefore submitted that the impugned proceedings so far as it confirms the demand for the tax periods 2017-2018, 2018-2019 and 2019-2020 are to be held to be time-barred and that composite Show Cause Notice was issued under Section 74 of the respective GST Enactments only to get over the limitation prescribed under Section 73 of the respective GST Enactments.



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WEB COPY32. As regards limitation, the learned counsel for the petitioner therefore submitted that the last dates for issuance of Show Cause Notice for the tax periods 2017-2018, 2018-2019 and 2019-2020 expired on 13.09.2023, 31.01.2024 and 31.05.2024 respectively. It is therefore contended that the Show Cause Notice dated 01.08.2024, which ultimately culminated in the impugned order dated 30.01.2025 was clearly barred by limitation under Section 74 of the respective GST Enactments.

33. In support of the said contention, reliance was placed on the decision of this Court in **M/s Titan Company Limited Vs. the Joint Commissioner of GST and Central Excise** vide order dated **28.12.2023** in **W.P.No.33164 of 2023**, wherein similar proceedings with regard to bunching of tax demand for various tax periods were interfered.

34. The learned counsel for the petitioner also drew the attention of this Court to the following decisions:-

1. **Joint Commissioner (Intelligence & Enforcement) and Another vs. Lakshmi Mobile Accessories**, represented by its Proprietor Badha Ramin **W.A.No.258 of 2025** dated **05.02.2025.**, 2025 SCC OnLine Ker 852.



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35. Adding further, the learned counsel for the petitioner submits that Section 74 (1) of the respective GST Enactments contemplates issuance of a Show Cause Notice on account of, or by reason of, fraud, wilful misstatement, suppression of facts, and non-payment of tax. It is therefore submitted that such Show Cause Notice has to be issued at least six months prior to the time limit specified under Section 74(10), as required under Section 74(2) of the respective GST Enactments.

36. It is submitted by the learned counsel for the petitioner that under Section 74(4) of the respective GST Enactments, a statement can also be issued for any other tax period where the assessee has not paid tax, where tax has been erroneously refunded, or where Input Tax Credit has been wrongly availed or utilized.

37. It is further submitted by the learned counsel for the petitioner that the service of such a statement under Section 74(3) of the respective GST Enactments shall be deemed to be a Notice under Section 74(1) of the respective GST Enactments, subject to the condition that the grounds relied upon in such statement are the same and that no new grounds such as fraud,

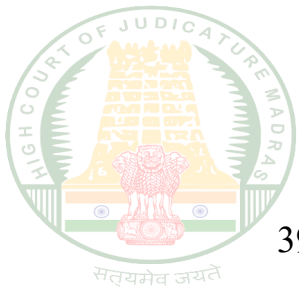


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wilful default, or suppression of facts are introduced for the tax period covered under the aforesaid sub-sections to Section 74 of the respective GST Enactments.

38. The learned counsel for the petitioner further submits that issues relating to bunching of tax demand for various tax periods by issuance of a single Show Cause Notice are also covered by a line of decisions of this Court as well as other High Courts. In this connection, reference was made to the decision rendered in **M/s.Titan Company Limited vs. The Joint Commissioner of GST and Central Excise** case referred to supra and to a few other decisions of the Hon'ble Karnataka and Kerala High Courts as detailed below:-

- I. Bangalore Golf Club v. Commercial Tax Officer in W.P.No.8050 of 2024 (T-RES) dated 05.06.2024, [2024] 164 taxmann.com 51 (Karnataka).*
- II. Veremax Technologies Services Limited v. Assistant Commissioner in W.P.No.15810 of 2023 (T-RES) dated 04.09.2024, [2024] 167 taxmann.com 332 (Karnataka).*
- III. Dilip Kumar Swain v. Deputy Director, DGGI in W.P(C).No. 27979 of 2024 dated 26.11.2024.*
- IV. Ms.XL Interiors v. Deputy Commissioner and 2 others in W.P(C).No.35156 of 2024.*



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39. As far as the issue of limitation is concerned, the learned counsel

for the petitioner drew the attention of this Court to the following decisions,

- I. Padmini Products v. Commissioner of Central Excise 1989(43) ELT 195 (SC)*
- II. Jai Prakash Industries Ltd. v. CCE, Chandigarh 2002 (146) ELT 481 (SC).*
- III. Nizam Sugar Factory v. CCE, AP 2006 (197) ELT 465 (SC)*
- IV. Continental Foundation Joint Venture v. Commissioner of Central Excise, Chandigarh 2007 (216) ELT 177 (SC)*
- V. K.T.Murukan vs. Commissioner in W.P.(C)No.35591 of 2016*
- VI. Pushpam Pharmaceutical Co. vs. Collector of Central Excise, Bombay [MANU/SC/1239/1995 : 1995 Suppl. (3) SCC 462].*

40. It is submitted by the learned counsel for the petitioner that the authorities could have raised a demand, if at all, only for the tax period between 01.03.2020 and July, 2022. This submission was made without prejudice to the petitioner's contention that there was no scope for issuance of a Show Cause Notice under Section 73 of the respective GST Enactments in the present case.

SUBMISSIONS OF THE RESPONDENTS:-

41. On the other hand, the learned counsel for the respondent submits that, with regard to the bunching of proceedings pertaining to different years,



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the issue cannot be treated as settled in view of the interim stay granted by the Division Bench of this Court in **W.A.No.3448 of 2025** dated **12.11.2025**.

Apart from that, the learned counsel for the respondents also refers to a decision of the Bombay High Court wherein it has been held that the bunching of proceedings is permissible under GST laws.

42. It was submitted by the learned counsel for the respondent that the Hon'ble Supreme Court has taken away the basis of the reasoning arising out of the final **judgement** and **order** dated **26.08.2025** in **M/s Mathur Polymers Vs. Union of India & Ors** in **W.P.No.2394 of 2025** passed by the High Court of Delhi, wherein the Court held as under:-

“22. Thus, this Court is of the opinion that in case involving allegations of fraudulent availment of ITC, where the transactions are spread across several years, a consolidated notice may in fact be required in such cases in order to establish the illegal modality adopted by such businesses and entities. The language of the legislation itself does not prevent issuance of SCN or order for multiple years in a consolidated manner”

43. The learned counsel for the respondent further submitted that even otherwise, in view of the decision of this Court in **M/s Titan Company Limited Vs. the Joint Commissioner of GST and Central Excise** vide



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Order dated **28.12.2023** in **W.P.No.33164 of 2023**, the Show Cause Notice issued on 01.08.2024 cannot be held to be barred by limitation and in any event the order passed in **W.P.No.33164 of 2023** in **M/s Titan Company Limited case** referred to supra has been stayed by the Hon'ble Division Bench.

44. The learned counsel for the respondent further submitted that the decision of this Court in **M/s Titan Company Limited Vs. the Joint Commissioner of GST and Central Excise**, referred to supra which was relied upon by the petitioner, stands distinguished on facts.

45. The learned counsel for the respondent drew the attention of this Court to the discussion in Paragraph No. 5 of the impugned order, wherein it is stated that the impugned order dated 17.10.2025 has clearly explained the discussion and the legal position prevailing thereafter.

46. It was submitted by the learned counsel for the respondents that not only the marks but also the representations were duly considered. Therefore, it was contended that the impugned order does not warrant interference under Article 226 of the Constitution of India. It was further submitted that the



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petitioner has an effective alternative remedy by way of an appeal before the

Appellate Authority.

REJOINDER SUBMISSIONS BY THE PETITIONER:-

47. On the other hand, the learned counsel for the petitioner submitted that insofar as the issuance of the Show Cause Notice in FORM GST DRC-01 for the aforesaid tax periods is concerned, there are binding decisions to the contrary.

48. It was therefore submitted by the learned counsel for the petitioner, if this Court is inclined to dismiss the writ petition, the petitioner may be granted liberty to challenge the impugned order before the appropriate forum.

DISCUSSION:-

49. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and I have perused the Affidavit filed in support of the present writ petition and the Counter Affidavit filed by the respondents and the other materials on record.



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WEB COPY 50. The points for consideration in the present writ petition are as follows:-

- i. Whether the above graphic pictorial representation of farmers along with agricultural implements used commonly by the petitioner on packaging material can be said to be “brand name” of the petitioner for marketing the products? and*
- ii. Whether the petitioner had claimed any monopoly over it to disentitle it the benefit of Sl.No.73 and 74 to the above Notification No.2/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No.28/2017-Central Tax (Rate) dated 22.09.2017 or whether the petitioner had given up the monopoly over it or not in terms of the above Notification?*

51. Trademark or the brand thus identifies the goods and/or service offered by its proprietor. It is intended to grab the attention of the consumer instantly to make an on the spot decision as to whether to buy the goods or pay for service of such proprietors.

52. The purpose of a trademark/service mark is to establish a trade connection between the goods and/or service offered by the proprietor of such a ‘brand name’ viz., Trade Mark and/or service mark. An average



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consumer decides to pay for such goods or services by referring to the mark associated with them.

53. Trademarks are intangible assets and are by themselves capable of being bought and sold like any other goods. They are the assets of the proprietors and are capable of being valued.

54. In fact, even if there is change in ownership of the trademark and the same goods or services are offered by the transferee or the new proprietor of such a mark, the consumer may continue to buy products or avail the services offered by the new proprietor. Thus, it is a very powerful asset of such proprietors.

55. They are powerful tools used by proprietors to build a customer base. They collectively represent the intrinsic value of the goods or service offered by the proprietor to sell their goods or service.

56. A word or expression becomes trademark, if it is either distinctive or is intended to distinguish the product. A distinctive mark is that mark which requires no proof of its distinctiveness. It is unique and different from



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others. It is class apart and stands out as a distinctive mark from others. There

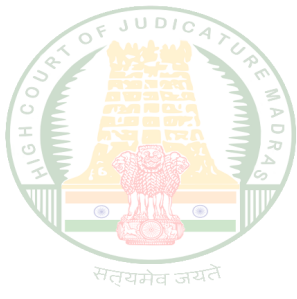
is a marked difference between the generic name and trademarks. Generic names can never be monopolized while a trademark can be.

57. To be called a distinctive mark, the mark should be unique and different from the rest in the milieu. It requires no proof of its distinctiveness. It instantly establishes a connection between the product and its proprietor for the consumers to buy the goods or the service.

58. Generic marks are descriptive of quality of the product and can never confer any proprietary rights to a person even if it is assiduously projected and promoted as a trademark. However, generic names can be neither registered under the law [Section 9 of the Trade Marks Act, 1999] or any monopoly can be claimed by any person under the common law.

59. As per the said author Mr. J. Thomas McCarthy in McCarthy on Trademarks and Unfair Competition, 3rd Edition, there are two basic categories of distinctive trademarks. They are as follows, namely:-

i. a mark which is distinctive and capable of being protected; and



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ii. a mark which has acquired distinctiveness through secondary meaning,

60. This Court in **ITC Limited, Rep by its Constituted Attorney**

S.Satyanathan Vs. Nestle India Limited., 2020 SCC Online Mad 1158

while analysing the characteristics of 'Trade Mark' held as under:-

“140. Once a mark or the brand has attained certain level of recognition and reputation, the buyers of goods or services may not even look beyond the brand or the mark.

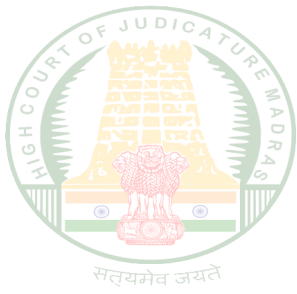
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147. According to him, within the above two basic categories of distinctive trademark, there are sub-categories that form the complete spectrum of distinctiveness of marks. Arrayed in an ascending order roughly reflecting their eligibility to trademark status and the decree of protection afforded, the categories are follows:-

- 1) generic terms;*
- 2) descriptive;*
- 3) suggestive; and*
- 4) arbitrary or fanciful.*

148. “Descriptive” words are not inherently distinctive while suggestive, arbitrary and fanciful terms are regarded as being inherently distinctive. [See McCarthy on Trademarks and Unfair Competition, 3rd Edition, J.Thomas McCarthy].

149. A mark, which conveys character or quality of the goods, is a descriptive mark. It is an inherently weak mark and is almost incapable of being protected and/or registered unless



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it has acquired distinctiveness due to its long and continuous use over a period of time to the exclusion of others.

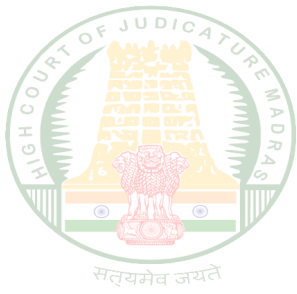
150. Proprietor who chooses words or artistic work which are not distinctive and are inherently weak or is incapable of protection, run the risk of such mark trampled or used by others. Law will cannot come to their rescue and they are often left without any remedy. Descriptive marks may attain distinctiveness on account of its long use and if nobody else had used it prior in time. If the marks are invented or coined as a new word, it affords a higher decree of protection under law.

...

152. If the mark is suggestive, it would require to pass the test of imagination for being protected. The more imagination is required on the customer's part to get the direct description of the product from the term, the more likely the term is suggestive and not descriptive."

61. The Hon'ble Supreme Court in **Astra Pharmaceuticals (P) Ltd Vs. Collector of C.Ex.Chandigarh.**, 1995 (75) E.L.T. 214 (S.C.), while bringing out the distinction between 'House Mark' and 'Product Mark' held as under:-

"6. As has been explained earlier the first part of the Explanation widens the ambit of the entry by extending it to any drug or medicinal preparation for use in internal or external administration for prevention of ailments in human beings or animals. But then it narrows it by restricting the applicability of the tariff item to only such medicines which bear either on itself or on its containers or both a name which is not specified in a monograph in a Pharmacopoeia. This



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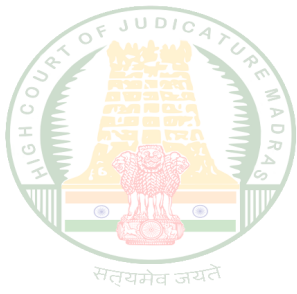
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obviously is not applicable to the appellant as the injections manufactured by the appellant are specified in a Pharmacopoeia. The other class of medicines to which this Explanation applies are those which have a brand name that is a name that is a name or a registered trade mark under a Trade & Merchandise Marks Act. The medicine manufactured by the appellants is not registered under the Trade and Merchandise Marks Act. Therefore, it would attract levy only if its container or packing carried any distinctive marks so as to establish the relation between the medicine and the manufacturer. But the identification of a medicine should not be equated with the product mark. Identification is compulsory under the Durg Rules. Technically, it is known as 'house mark'. In Narayan's Book on Trade Marks and Passing-Off, the distinction between 'house mark' and 'product mark' (brand name) is brought out thus,

“677A. House mark and product mark (or brand name).

In the pharmaceutical business a distinction is made between a house mark and a product mark. The former is used on all products of the manufacturer. It is usually a device in the form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a combination of a word and letter of numeral by which the product is identified and asked for. In respect of all products both the product mark and house mark will appear side by side on all the labels, cartons etc. Goods are ordered only by the product mark or brand name. The house mark serves as an emblem of the manufacturer projecting the image of the manufacturer generally”

The 'AP' or 'Astra' on the container or packing was used to project the image of the manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant instead of using Dextrose injections would have described it as Astra injections or Astra Dextrose injections then it could be said that a relationship between the monograph and the medicine was established. In the case of appellant it was only a monograph to identify the manufacturer.

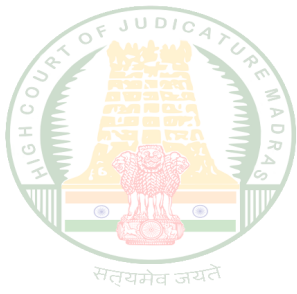


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7. In *M/s Indo French Pharmaceutical Co., Madras V. Union of India and Others - 1978 (2) E.L.T. (J 478)* a learned Single Judge of the Madras High Court while construing Tariff Item 14E observed,

“a close reading of the Explanation however in my view indicates that the marks, symbols, monogram, label, signature or other words which are used in the medicinal preparation or its container should be such as to indicate that the medicine is a special preparation made by the manufacturer. The connection between the medicine and the manufacturer contemplated under the Explanation should be such as to indicate that the manufacturer has a proprietary interest in the medicine”.

*This was approved by the Division Bench of the same High Court in *Union of India V. Indo-French Pharmaceutical Company - 1983 (12) E.L.T. 725 (Mad)*. Reliance was placed on *Ramsey Pharma Private Ltd v. Superintendent, Central Excise, Allahabad & Ors - 1983 (12) E.L.T. 78 (All)*. for the Revenue and it was claimed that this decision was followed by the Tribunal and since it was based on the correct interpretation of Explanation I the appellant was not entitled to any relief. It would be seen that in the decision rendered by the Allahabad High Court it is not clear if the container bore the name of the medicine as well. What has been extracted in the judgement is that the medicine has been manufactured by *M/s Ramsey Pharma Pvt Ltd*. As stated earlier if the container of the appellant would have stated that these were *Astra Dextrose injections* then it could be said that a relationship between the medicine and the manufacturer was established. The ratio laid down by the Madras High Court is approved as correctly enunciating the scope of Explanation I. Since the appeal is being allowed on merits the question whether the Revenue was justified in reopening the case under proviso to Section 11A of the Act is rendered academic and is not necessarily to be decided.”*



WEB COPY 62. The expression 'Trade Mark' has been defined in section 2(zb) of the Trade Marks Act, 1999 as follows:-

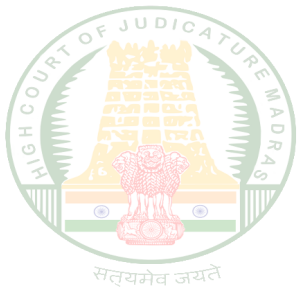
Section 2(zb) —trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

63. The expression 'mark' is defined as follows in Section 2(m) of the Trade Marks Act, 1999 as follows:-

Section 2(m): 'mark' includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of



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goods, packaging or combination of colours or any combination thereof;

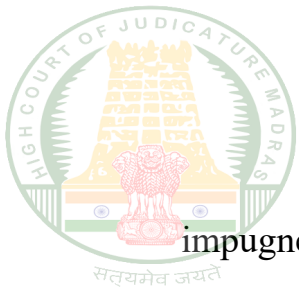
64. The unit container in which the subject goods were packed are similar to the goods which were packed with their registered brand name. The unit container for which the benefit of the above notification was availed has two parts to it, namely:-

I. The above pictorial representation of farmers in action with agricultural implements.

II. The corporate name of the petitioner namely, 'Narasus Saarathy Private Limited'.

65. The above graphic pictorial representation of farmers along with agricultural implements were used on all packaging material i.e the “unit container” as defined above vide amendment **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**.

66. The core reason for denying the benefit of exemption **Serial Nos.73 and 74 of Notification No.2/2017-Central Tax (Rate)** dated **28.06.2017** as amended by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** has been discussed in Paragraph No. 05.01 to 05.06 of the



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impugned order. Paragraph No. 05.01 to 05.06 of the impugned order can be

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A. The pattern (graphical design) is printed on all of their packing i.e., for both branded and unbranded packaging of goods.

B. The water mark and colour and font used in unbranded packing behind the name of the product 'Maida' is similar to the one used in branded packing.

C. The batch numbers printed in unbranded packing materials such as ULA, PWR, WHE, BUD, PLAIN, VET, YES, VPA, PWB and PWR are similar abbreviations of the registered trade mark of NARASUS.

D. In some of the unbranded goods, part of the registered brand symbol/name is used.

E. The registered and most prominent brand name "NARASUS" is used in unbranded packaging as the name of the manufacturer "NARASUS SAARATHY ENTERPRISES PRIVATE LIMITED".

F. The taxpayers used a series of cartoon pictures, same colour, font, water mark, part of brand name along with the name of the manufacturer "NARASUS SAARATHY ENTERPRISES PRIVATE LIMITED" in both the branded and unbranded packing materials.

67. Relevant portion of the text of the aforesaid **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** with effect from 01.07.2017, as it stood, prior to its amendment by **Notification No.28/2017-**



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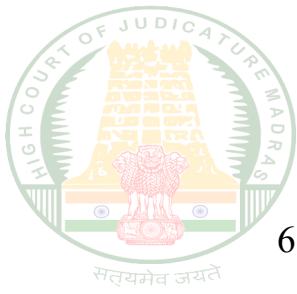
Central Tax (Rate) dated 22.09.2017 is extracted below:-

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“G.S.R. (E):- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to this notification, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, from the whole of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017).

Schedule

<i>S.No.</i>	<i>Chapter/Heading/Sub-Heading/Tariff item</i>	<i>Description of Goods</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>1</i>	<i>..</i>	<i>..</i>
<i>..</i>	<i>..</i>	<i>..</i>
<i>73</i>	<i>1101</i>	<i>Wheat or meslin flour [other than those put up in unit container and bearing a registered brand name]</i>
<i>74</i>	<i>1102</i>	<i>Cereal flours other than of wheat or meslin, [maize (corn) flour, Rye flour, etc][other than those put up in unit container and bearing a registered brand name]</i>



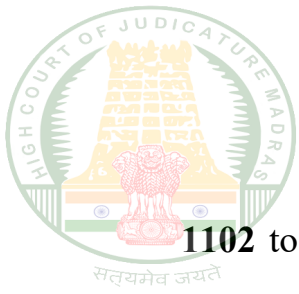
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68. The expression 'unit container' and 'registered brand name'

are/were defined in Explanation (i) and (ii) to **Notification No.2/2017-Central Tax (Rate)** dated **28.06.2017**. For the sake of clarity, they are reproduced below in the following **Tabular Column**:-

<i>Explanation. —For the purposes of this Schedule,-</i>	
<i>(i) The phrase "unit container" means a package, whether large or small (for example, tin, cane, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number, which is indicated onto such package.</i>	<i>(ii) the phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act. 1999.</i>

69. Thus, initially, prior to amendment by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** as per **Serial No. 73** and **Serial No. 74**, the exemption was confined to specified goods under **Heading 1101** and



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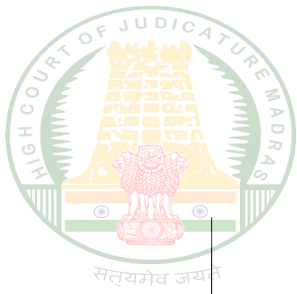
1102 to Notification No.2/2017- Central Tax (Rate) dated 28.06.2017 put

up in unit container without bearing any “registered brand name”.

70. However, by **Notification No.28/2017-Central Tax (Rate) dated 22.09.2017, S.No.73 and 74 to Notification No.2/2017- Central Tax (Rate) dated 28.06.2017** were amended to read as under:-

Schedule

<i>S.No.</i>	<i>Chapter/Heading/Sub-Heading/Tariff item</i>	<i>Description of Goods</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>1</i>	<i>..</i>	<i>..</i>
<i>..</i>	<i>..</i>	<i>..</i>
<i>73</i>	<i>1101</i>	<i>Wheat or meslin flour [other than those put in unit container and,- (a) Bearing a registered brand name; or (b) Bearing a brand name on which actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditionals as in the ANNEXURE - I</i>
<i>74</i>	<i>1102</i>	<i>Cereal flours other than of wheat or meslin [other than those put in unit</i>



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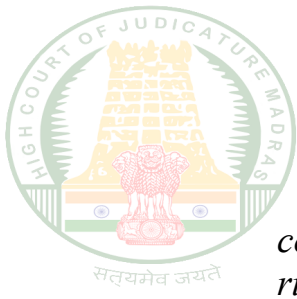
	<p><i>container and,-</i></p> <p><i>(a) Bearing a registered brand name; or</i></p> <p><i>(b) Bearing a brand name on which actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditionals as in the ANNEXURE - I</i></p>
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71. The expression “**actionable claim or enforceable right on a brand**” for the purpose of the above exemption were defined in ANNEXURE-I vide amendment **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** to read as under:-

“ANNEXURE-I

For foregoing an actionable claim or enforceable right on a brand name,-

(a) the person undertaking packing of such goods in unit containers which bears a brand name shall file an affidavit to that effect with the jurisdictional commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and the person undertaking packing of such goods in unit containers which bear a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii)(a) printed on the unit



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containers he has foregone his actionable claim or enforceable right voluntarily”

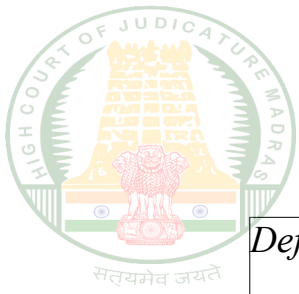
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72. The definition of the expression ‘**unit container**’ remained unchanged by the above amendment **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**.

73. However, Clause (ii) to **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** as extracted above was amended. New definitions were incorporated for the expression ‘**registered brand name**’ and ‘**brand name**’ vide amendment by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**.

74. These definition in the Explanation to **Notification No.2/2017-Central Tax (Rate)** dated **28.06.2017** after amendment vide **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** are extracted below in a Tabular Column as under for the sake of clarity:-

	<i>Explanation. —For the purposes of this Schedule,-</i>		
<i>Clause</i>	<i>(i)</i>	<i>(ii)(a)</i>	<i>(iii)(b)</i>
<i>Expression</i>	<i>Unit Container</i>	<i>Brand Name</i>	<i>Registered Brand Name</i>



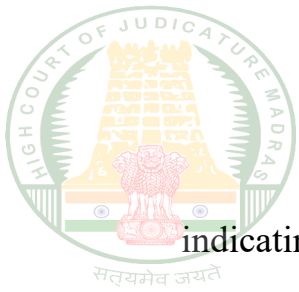
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<p>Definition</p>	<p>(i) The phrase "unit container" means a package, whether large or small (for example, tin, cane box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number, which is indicated on such package.</p>	<p>(ii)(a) The phrase "brand name" means brand name for trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to whether or not such specified goods for the purpose of indicating, or so as to indicate a connection in the specified goods and some person using such name or mark with or without any indication of that identity of that person.</p>	<p>(b) The phrase "registered brand name" means,- (A) a brand registered as on the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered; (B) a brand registered as on the 15th May 2017 under the Copyright Act, 1957(14 of 1957); (C) a brand registered as on the 15th May 2017 under any law for the time being in force in any other country.</p>
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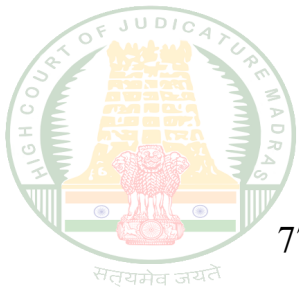
75. The above definition of ‘Brand Name’ makes it clear that a ‘Brand Name’ means a “Brand Name” or a “Trade Name”, that is to say, a name or a mark such as a symbol, monogram, label, signature, invented word, writing which is used on the specified goods for the purpose of



indicating or so as to indicate a connection in the course of trade between the goods and the person using such a trade name or a brand name, with or without any indication.

76. The definition of ‘Brand Name’ in Notification No.2/2017-Central Tax (Rate) dated 28.06.2017 inserted/amended by Notification No.28/2017-Central Tax (Rate) dated 22.09.2017 can be simplified for the purpose of understanding as below:-

<p>Brand name means (i) brand name or; (ii) trade name, that is to say,</p> <p style="text-align: center;">↓</p>	<p>which is used on the specified goods →</p>	<p>(i) for the purpose of indicating or; (ii) so as to indicate, any connection in the course of trade between</p> <p style="text-align: center;">↓</p>	<p>With or without any indication of the identity of that person</p>
<p>(a) brand name; or</p> <p style="text-align: center;">↓</p>	<p>(b) trade mark</p>	<p>(1) Such specified goods and</p>	<p>(2) Some person using such brand name or trade mark</p>
<p>such as 1.Symbol, 2.Monogram, 3. Label, → 4. Signature, 5. invented word, 6.writing</p>			



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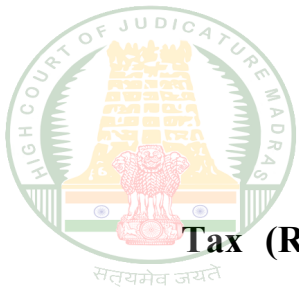
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77. The above pictorial representation which was commonly used in the unit containers by the petitioner for specified goods was indeed a **'Brand Name'** as defined in the amendment vide **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** to **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017**.

78. The above graphic representation was used by the petitioner on the packaging material i.e., the unit containers qualifies as a **'Brand Name'**, as per the definition of 'Brand Name' vide amendment by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** to **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017**.

79. In the case of specified goods bearing a **"brand name"** *simpliciter*, the benefit was still available, provided that "any actionable claim or enforceable right in respect of such **"brand name"** was voluntarily foregone, subject to the conditions in **Annexure-I** to **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** as amended **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**.

80. Thus, after the amendment to **Notification No.2/2017- Central**



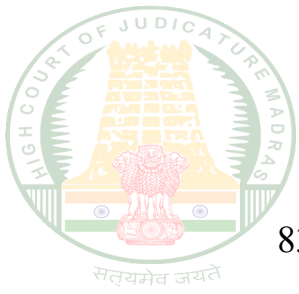
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Tax (Rate) dated **28.06.2017** by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**, the exemption to specified goods put up in unit containers was extended to both;

- i. specified goods which were unbranded; and to*
- ii. specified goods packed in 'unit containers' bearing 'unregistered brand name.'*

81. As far as the present case is concerned, the Court is not concerned with the situation contemplated for specified goods sold in 'unit container' with a '**registered brand name**', either before or after the amendment to the **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**. This Court is also not concerned with supply of specified goods without '**Brand Name**'.

82. There is no dispute that the petitioner had indeed filed an Affidavit on 23.01.2018 before the concerned authority on 24.01.2018 in terms of the **Annexure-I** to the amended **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** vide **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017**.



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83. The said Affidavit was subsequently returned by the department on **16.04.2018**, stating that the petitioner was not using the '**Brand Name**' on the '**Unit Container**' and therefore there was no necessity for the petitioner to forego any right thereon. This is also captured in Paragraph No. 05.07 of the Impugned Order, content of which has been captured above. For the sake of clarity, Paragraph No.5.7 from the impugned order is extracted below:-

“05.07 However, the taxpayer claims exemption from payment of GST under GO (Ms) No.114 Dated 22.09.2017 issued by the State GST Department of Tamil Nadu by filing an affidavit with the SGST Department mentioning their products Maida, Sooji/Suji. R.Atta/Atta, Whole Wheat Atta as “UNBRANDED”. They also declared that they print the disclaimer “We hereby voluntarily forego our all types of actionable claim or enforceable right in respect of brand name printed on this bag” both in English and Tamil. An affidavit on the similar lines furnished by the taxpayer vide Letter dated 24.01.2018 for claiming GST exemption under Notification No.02/2017 CT (Rate) dated 28.06.2017 as amended vide Notification No.28/2017 CT (Rate) Dated 22.09.2017 to the CGST department was returned to them vide Letter C.No.IV/16/35/2017-GST CELL (Pf) dated 16.04.2018 since the taxpayer is not using the brand name in the unit container, the need of filing affidavit for foregoing actionable claim would not arise.”

84. In view of the declaration made in the Affidavit as mentioned above, the petitioner is entitled to the benefit of exemption under **Serial Nos.73 and 74 to Notification No.2/2017- Central Tax (Rate)** dated



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28.06.2017 as amended by **Notification No.28/2017-Central Tax (Rate)**

WEB C dated **22.09.2017**.

85. In Paragraph No. 05.08 of the impugned order, the Respondent has stated as under:-

“05.08 Though M/s Narasus Saarathy Enterprises Pvt Ltd have declared disclaimer” on their so-called unbranded packing materials, it appears that all their products are marketed under the registered Brand Names only as there is similarities in the packing material used for packing the branded as well unbranded goods as explained above in paras 04 to 07. As the taxpayer have not foregone their actionable claim on their registered brand names viz., “Narasu’s”, “Narasu’s Vetri”, “Narasu’s S”, “Narasu’s Budget”, “Narasu’s Wheel”, “Narasu’s Power”, Narasu’s Ulaash”, the supply of their products under the guise of “Unbranded” have also to be treated as supplies under Registered Brand Names and they are not eligible for the exemption from the GST under Notification No.02/2017 CT (Rate) dated 28.06.2017 as amended vide Notification No.28/2017 CT (Rate) Dated 22.09.2017 and they are liable for payment of GST on such purported unbranded clearances”.

86. Thus, it is evident that by filing an Affidavit, the petitioner declared to the department that the petitioner was availing the benefit of the **Serial No. 73 and 74 of Heading 1101 and 1102 of the Notification No.2/2017-Central Tax (Rate)** dated **28.06.2017** as amended by **Notification**



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No.28/2017-Central Tax (Rate) dated 22.09.2017.

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87. Thus, there is no suppression of fact and therefore, invocation of the extended period of limitation was not available under Section 74 of the respective GST Enactments. At best, only the normal period under Section 73 of the respective GST Enactments is available in view of the decision of the Hon'ble Supreme Court in **Nizam Sugar Factory v. CCE, AP., 2006 (197) ELT 465 (SC)**, wherein the Hon'ble Supreme Court has held as under:-

“8. Without going into the question regarding Classification and marketability and leaving the same open, we intend to dispose of the appeals on the point of limitation only. This Court in the case of P & B Pharmaceuticals (P) Ltd v. Collector of Central Excise MANU/SC/0151/2003: reported in 2003(86)ECC20 has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the department. It was observed in para 14 as follows:

14. We have indicated above the facts which make it clear that the question whether M/s Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was in 1985 and also at the stage when the second and third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then



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taken the view that M/s Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the act for making the demand for the extended period.”

88. There is also no dispute that the department had returned the Affidavit filed by the petitioner in terms of the **Annexure-I** to the amended **Notification No.2/2017- Central Tax (Rate)** dated **28.06.2017** by **Notification No.28/2017-Central Tax (Rate)** dated **22.09.2017** on 16.04.2018.

89. As far as declaration of ‘Narasus Saarathy Enterprises Limited’ on ‘**Unit Container**’ is concerned, it has to be held to be not a ‘Trade Mark’ or ‘Brand Name’ of the petitioner. It is at best a ‘Trade name’ of the petitioner, as required to be declared under the provisions of **Food Safety and**



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Standards Act, 2006 and Legal Metrology Act, 2009 and the Rules made

thereunder as the expression 'Brand Name' or 'Trade Name' for the

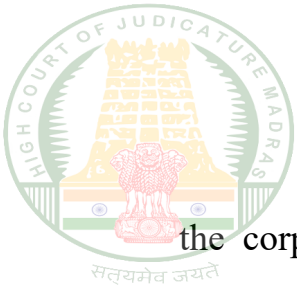
purpose of Notification No.2/2017- Central Tax (Rate) dated 28.06.2017 as

amended by Notification No.28/2017-Central Tax (Rate) dated 22.09.2017

can mean only as:-

- (i) Symbol,
- (ii) Monogram,
- (iii) Label,
- (iv) Signature,
- (v) invented word,
- (vi) writing

90. As far as conclusion in Paragraph No. 06.08 of the impugned order is concerned, it has to be held that the Petitioner is not required to give up any claim on the registered brand name viz., “Narasu’s”, “Narasu’s Vetri”, “Narasu’s S”, “Narasu’s Budget”, “Narasu’s Wheel”, “Narasu’s Power”, “Narasu’s Ulaash” to claim the benefit of **Serial No. 73 and 74 of Heading 1101 and 1102 of the Notification No.2/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No.28/2017-Central Tax (Rate) dated 22.09.2017** as they were not used along the specified product barring



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the corporate name of the petitioner required to be declared under Food Safety and Standards Act, 2006 and Legal Metrology Act, 2009 and the aforesaid graphic pictorial representation on the unit containers for the unbranded specified goods.

91. Although, the issue of bunching of multiple tax periods by issuance of a single Show Cause Notice was raised, the larger issue is still pending before the Hon'ble Division Bench of this Court and in view of the above discussion on merits that the petitioner is indeed entitled to the benefit of **Notification No.2/2017- Central Tax (Rate) dated 28.06.2017** by **Notification No.28/2017-Central Tax (Rate) dated 22.09.2017** in the light of the Affidavit filed by the petitioner, I am refraining from expressing any opinion on the issue of bunching of multiple tax periods by issuance of a single Show Cause Notice.

92. In view the above discussion, the present writ petition is allowed. Connected Miscellaneous Petitions are closed. No costs.

16.03.2026

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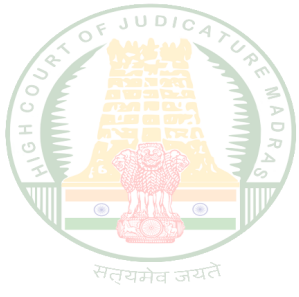


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Neutral Citation : Yes / No

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1. The Additional Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.
2. The Joint Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.



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C.SARAVANAN, J.

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Pre-delivery Order in
W.P.No.6069 of 2025

16.03.2026