

# **Sale of Rice under an Unregistered Brand name liable to GST if actionable claim or enforceable right has not been foregone not proved**

**2021 (4) TMI 1137 - Tripura High Court in M/S Sarvasiddhi Agrotech Pvt. Ltd. Versus The Union Of India**

## ***Petitioner Pleading***

1. The company supplies Non-Basmati un-branded rice.
2. The stand of the petitioner was that the petitioner had submitted an affidavit dated 05.04.2019 forgoing the actionable claim or enforceable right on the brand name printed in the unit containers for supply of rice.
3. It was contended that the petitioner had not supplied any branded rice in unit containers after 22.09.2017.
4. There was internal grading of rice as per the quality variety and price which was graded under the erstwhile brand name of Aahar Normal, Aahar Gold and Aahar Premium, which was strictly for internal use and not for supply. It was also contended that the quantity of rice seized included packages marked prior to 22.09.2017,
5. He pointed out that the brands Aahar Normal, Aahar Gold and Aahar Premium were not registered brands and therefore, would not come within the purview of taxable supplies. He also submitted that the seized quantity of rice was only meant for internal use and not for sale.

## ***Respondents Pleading***

1. State Goods and Service Tax Authorities, on a prior intelligence that the petitioner is dealing in branded rice, carried out a raid at the godown and other premises of the petitioner- company
2. Enforcement officers of the department visited the factory premises of the petitioner on 17.07.2018 and found that the petitioner was supplying branded packaged rice in unit containers without payment of GST. Therefore, bill books, order books and several bags of branded rice packaged while Sarvasiddhi Agrotech Pvt. Ltd. i.e. the petitioner-company were seized. It was alleged that as per the bill books so seized along with the sales statements submitted by the noticees, it would emerge that for the period between 01.07.2017 to 17.07.2018, the petitioner had sold branded rice of Aahar Normal, Aahar Gold and Aahar Premium

3. Aahar Normal, Aahar Gold and Aahar Premium on which an actionable claim or enforceable right in a court of law is available.
4. Noticee had not voluntarily forgone the actionable claim or enforceable right in respect of the brands in question
5. The petitioner had supplied rice in packages of 25 kg each which carried the brand name Aahar Normal, Aahar Gold or Aahar Premium.
6. Sizable quantity of such packaged branded rice was also seized from the premises. It was on the basis of such materials that the adjudicating authority came to the conclusion that the petitioner was engaged in supply of packaged branded rice.
7. Demand cum Show Cause Notice that the petitioner was engaged in manufacturing, package and supply of branded rice in 25 kilogram bags having product names "Aahar Normal", "Aahar Gold" and "Aahar Premium" without payment of GST,
8. The Appellate authority confirmed the finding of the adjudicating authority and dismissed the Appeal of the petitioner.

### ***Hon'ble Court Order***

1. Since the Tribunal is not yet constituted the petitioner has filed the present petition to challenge the order in original and order in Appeal.
2. Firstly, the conclusions of these authorities are based on assessment of materials on record.
3. Secondly, the seizure of sizable quantity of packaged branded rice was an indication of the petitioner dealing in such product.
4. Thirdly, the tax is not demanded on rice stored and seized but on the quantity of rice already supplied which was assessed from the bill books and invoices seized from the premises of the petitioner-company.
5. Further, the petitioner's defence that the quantity of rice lying in the godowns was merely for internal use was also not backed by any evidence.
6. Lastly, the petitioner's contention that the brand was not a registered brand and therefore the petitioner had no liability to pay tax also was rightly not accepted. As pointed out by the counsel for the petitioner himself under a Notification dated 22.09.2017 issued by the Government of India, original expression of "put up in unit container and bearing a registered brand name" what is now substituted is that it should be put in unit container and may be bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available
7. The brand names under which the petitioner was selling the rice may not have been registered, nevertheless it could lead to an actionable claim in a court of law.