

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

Friday, the 15th day of March 2024 / 25th Phalgun, 1945

IA.NO.1/2024 IN WP(C) NO. 6972 OF 2024

PETITIONER:

AMRUTHA S., AGED 35 YEARS, W/O SREERAM, AZHATHU HOUSE, ANANDA BHAVANAM, CHUNAKKARA NORTH, ALAPPUZHA, CHUNAKKARA P O, MAVELIKKARA, KERALA, PIN- 690534

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE UNION FINANCE MINISTER, HON'BLE UNION MINISTER FOR FINANCE, MINISTRY OF FINANCE, GOVT OF INDIA, NORTH BLOCK, NEW DELHI, PIN- 110001
2. THE GST COUNCIL, REPRESENTED BY THE FINANCE SECRETARY GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI, PIN- 110001
3. THE SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, NIRMAN BHAWAN, RAJPATH AREA, CENTRAL SECRETARIAT, NEW DELHI, PIN- 110001
4. THE CHAIRMAN, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (CBIC) NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI, PIN- 110001
5. THE COMMISSIONER OF CGST, CGST DEPARTMENT, CENTRAL REVENUE BUILDINGS, I S PRESS ROAD, ERNAKULAM, KERALA, PIN- 682018
6. ABS CHEMIST & DRUGGIST A UNIT OF AHSOLUTE DISTRIBUTION SOLUTIONS PVT. LTD; 66/4129, 1ST FLOOR, CHAKOS TOWER, PADMA PULLEPADY ROAD, ERNAKULAM-682035, REG.OFF 101, GRAND BELLA VISTA, S V ROAD, BANDRA W, MUMBAI (SOUGHT TO BE IMPEADED)

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to direct respondents 1 to 5 not to collect IGST from the 6th respondent for purchase of life saving drug Risdiplam (imported from F-Hoffmann-La Roche Ltd, Switzerland) for the treatment of the son of the petitioner who is suffering from Spinal Muscular Atrophy, pending final disposal of the Writ Petition.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of M/S. T.SANJAY, SANIL KUMAR G. & SHABNA T.K., Advocates for the petitioner, the court passed the following:

GOPINATH P., J

I.A.No. 1 of 2024

In

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Dated this the 15th day of March, 2024

ORDER

The petitioner is the mother of a three-year-old child suffering from a life-threatening disease, namely '*Spinal Muscular Atrophy*' (SMA). The only medicine currently available for treating this ailment is '*Risdiplam*' (brand name '*Evrysdi*'), a medicine imported from a company known as F-Hoffmann-La Roche Ltd, Switzerland. The petitioner is sourcing the medicine from the additional 6th respondent.

2. The writ petition has been filed stating that, by virtue of the provisions contained in Article 279A(4) of the Constitution of India, it is open to the Goods and Services Tax Council to make recommendations regarding the goods and services that may be exempted from the levy of Goods and Services Tax. It is pointed out that, as per Ext.P7 Minutes of the 26th GST Council meeting held on 10-03-2018, it was decided that the Union Finance Minister is competent to grant *ad hoc* exemption from IGST payable on imported goods as per the guidelines laid down in Circular No.09/2014-Customs dated 19-08-2014. The Circular referred to above is on record as Ext.P8. It is pointed out by the learned counsel for

the petitioner that paragraph No.5 of Ext.P8 Circular refers explicitly to the import of medicines for the treatment of individuals suffering from life-threatening diseases, which can be considered for exemption on a case-to-case basis. It is submitted that the present price of '*Risdiplam*' (brand name '*Evrysdi*') is Rs.6.07 Lakh per bottle, including 12% GST, as can be seen from Exts.P3 and P4 series of bills. It is submitted that Ext.P5 application for exemption in terms of Ext.P7 r/w the provisions of Ext.P8 Circular is pending consideration of the Union Finance Minister. It is submitted that pending consideration of Ext.P5, the petitioner may be permitted to purchase '*Risdiplam*' (brand name '*Evrysdi*') from the additional 6th respondent without payment of any GST.

3. Having heard the learned counsel for the petitioner and the learned Deputy Solicitor General of India appearing for respondent Nos.1 and 3, I am of the opinion that the petitioner is entitled to an interim order permitting the petitioner to purchase the drug '*Risdiplam*' (brand name '*Evrysdi*') from the additional 6th respondent without of payment of GST. It is clear from the terms of Ext.P.8 Circular r/w Ext.P.7 minutes of the GST Council and the provisions of Article 279A(4) of the Constitution of India that the Union Finance Minister is competent to consider the grant of exemption from IGST for the import of medicines for individuals who are suffering from life-threatening diseases. The case of the petitioner appears to be eminently qualified for the grant of such exemption. Ext.P.5

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application for exemption is dated 17-10-2023 and has not been favoured with any reply. In such circumstances, it is only appropriate that suitable directions be issued by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India.

Accordingly, it is directed that the petitioner will be entitled to purchase the drug *Risdiplam* (brand name *Evrysdi*) from the additional 6th respondent without payment of GST. The additional 6th respondent is permitted to issue a bill of supply as contemplated by Section 31(3)(c) of the Central Goods & Services Tax Act / State Goods & Services Tax Act. This arrangement shall be provisional, and it will be open to the additional 6th respondent to apply to this Court for further modifications/directions regarding any difficulty it may face in supplying the goods as directed. This Court places on record its appreciation for the assistance rendered to this Court by Sri. A. Kumar, learned Senior Advocate, who was present in Court when this case was taken up.

Sd/-

**GOPINATH P.
JUDGE**

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