IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.5125 & 5126 of 2019

MSE Industries
57-B, Anamalai Amman Kovil Street
Vellalore, Coimbatore - 641 111
Represented by its Managing Partner
Shri.K.B.Mahesh Kumar ...Petitioner in both W.P.s

vs.

1. The Assistant Commissioner,
   TNGST, Dr.Balasundaram Road
   Coimbatore - 641 018.

2. The Deputy Commissioner, CGST
   GST Bhawan
   Race Course Road,
   Coimbatore - 641 018. ... Respondents in both W.P.s

Writ Petition No.5125 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to refund the input tax credit lying in the petitioner's erstwhile VAT account bearing Identification No.33561803935 as the petitioner has been declared as a non-performing asset by Canara Bank and as such has closed down its entire operations/business.

Writ Petition No.5126 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to refund the input tax credit lying in the petitioner's erstwhile CENVAT account bearing Registration No.AAPFMO322AEM001 as the petitioner has been declared as a non-performing asset by Canara Bank and as such has closed down its entire operations/business.

For Petitioner in both W.P.s : Mr.Rahul Unnikrishnan
For Respondents in both W.P.s : Mr.M.Hariharan
Additional Government Pleader
for R1
Mr.K.S.Ramasamy
standing counsel for R2

COMMON ORDER

These writ petitions are filed seeking for mandamus directing the first respondent to refund the input tax credit lying in the petitioner's erstwhile VAT account and CENVAT account respectively, as the petitioner has been declared as a non-performing asset by the Canara Bank.

2. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the first respondent and the learned standing counsel for the second respondent.

3. Perusal of the facts and circumstances and the prayers sought for in these writ petitions would show that the petitioner seeks for refund of Input Tax Credit lying in the petitioner's erstwhile VAT account as well as CENVAT account. However, it is seen that the petitioner has filed these writ petitions straightaway without making any demand to that effect by way of refund claim before the concerned authorities. Needless to say that mandamus cannot be sought for without making any demand before appropriate authorities.

4. The learned counsel for the petitioner submitted that the authorities may site a particular provision of GST and deny the benefit.

5. I do not think that the petitioner can apprehend so and file the writ petitions seeking mandamus straighaway without making any demand before the concerned authorities. Unless the demand is made and it is not considered, the petitioner is not entitled to approach this Court and seek for such relief.

6. Accordingly, without expressing any view on the merits of the claim made by the petitioner, this Writ Petition is disposed of, by granting liberty to the petitioner to make such demand before the concerned authorities. If any such demand is made, the same shall be considered and appropriate orders shall be passed on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar



//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner,
   TNGST, Dr.Balasundaram Road
   Coimbatore - 641 018.

2. The Deputy Commissioner, CGST
   GST Bhawan
   Race Course Road,
   Coimbatore - 641 018.

+1 cc to M/s.K.S.Ramasamy,Advocate Sr.No. 95422
+1 cc to The Special Government Pleader(Taxes),
Sr.Nos.95711 and 95801

AKM/16.12.19/3P- 5C /

W.P.Nos.5125 & 5126 of 2019