

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.34084 & 34089 of 2018

and

W.M.P.Nos.39599 & 39604 of 2018

M/s.Helvetica Lifestyle Boutique Private Ltd.,
Represented by its Director Shri.Teerath A. Doshi
S027, Ground Floor, Express Avenue,
Royapettah, Chennai-600 010. ...Petitioner in W.P.No.34084/2018

M/s.Horology Impex Co.,
Represented by its Partner Mrs.Unnati A.Doshi
S002-003, Ground Floor, Express Avenue,
Royapettah, Chennai-600 010. ...Petitioner in W.P.No.34089/2018

Vs.

- 1.The Goods and Service Tax Network
East Wing, 4th Floor
World Mark-1
Aerocity, New Delhi - 110 037.
- 2.The Commissioner of Central Taxes and Central Excise
Chennai North Commissionerate
26/1, Mahatma Gandhi Salai
Chennai-600 034. ... Respondents 1 & 2 in both W.P.s
- 3.The Assistant Commissioner of Commercial Taxes
4th Floor, PAPJM Building
Greens Road,
Chennai-600 006. ...3rd respondent in W.P.No.34084/2018
- 3.The Assistant Commissioner of Commercial Taxes & CE
Egmore Division, Range V
Chennai North Commissionerate
Newry Towers, No.2054, I Block, II Avenue
12th Main Road, Anna Nagar,
Chennai-600 040. ...3rd respondent in W.P.No.34089/2018

Writ Petition No.34084 of 2018 filed under Article 226 of
the Constitution of India praying to issue a Writ of Mandamus,

directing the first respondent to do the needful to credit the ITC amount of Rs.44,59,601/- to the Electronic Credit Ledger of the petitioners.

Writ Petition No.34089 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to do the needful to credit the ITC amount of Rs.62,28,683/- to the Electronic Credit Ledger of the petitioners.

For petitioners in both W.P.s : Mr.S.Jaikumar
For Respondents in both W.P.s : Mr.V.Sundareswaran
standing counsel for R1
Mr.Rajkumar Jabhak
standing counsel for R2
Mr.Mohammed Shaffiq
Special Government Pleader
for R3

COMMON ORDER

Both these writ petitions are filed by two different petitioners arising out of the same issue involved in both the cases.

2. While W.P.No.34084 of 2018 is filed seeking for mandamus directing the first respondent to credit the ITC amount of Rs.44,59,601/- to the Electronic Credit Ledger of the petitioners, W.P.No.34089 of 2018 is filed seeking for mandamus directing the first respondent to credit the ITC amount of Rs.62,28,683/- to the Electronic Credit Ledger of the petitioners.

3. Heard Mr.S.Jaikumar, learned counsel appearing for the petitioners, Mr.V.Sundareswaran, learned standing counsel appearing for the first respondent, Mr.Rajkumar Jabhak, learned standing counsel appearing for the second respondent and Mr.M.Hariharan, learned Additional Government Pleader appearing for the third respondent.

4. The case of the petitioners, in short, is as follows:

The petitioners are the retailers of Watches and Leather Accessories of various types. They are registered dealers under the Tamil Nadu Value Added Tax Act, 2006. They are duly discharging their VAT liability and availing the benefit of Input Tax Credit under the said law. With effect from 01.07.2017, various indirect taxes such as Central Excise duty, VAT, Service Tax etc., were subsumed into a single Goods and Service Tax (GST). The products sold by the petitioners

suffered additional duty of customs. On 01.07.2017, the petitioners were having substantial stock of watches, accessories etc., which were procured from various persons, who have originally imported the same. The petitioners thus, are entitled to claim the Input Tax Credit. The petitioners had filed Form GST Tran-1, declaring the details of stock on which the invoice did not indicate the quantum of CVD paid on the said stock, which is well before the due date. As per the said rules, the petitioners had to file Form GST Tran-2 providing the details respect to the sale of such stock in the next six months i.e. from 01.07.2017 to 31.12.2017. But, due to complex procedures, the petitioners were unaware of filing Tran-2 and thus, failed to file Tran-2 within the due date viz., 30.06.2018. However, the monthly returns filed by the petitioners disclosed the details of sale on such stock, even though the petitioners did not file Form GST Tran-2. Therefore, the petitioners made representations to the respondents on 13.11.2018 in both the cases explaining the facts and circumstances and requesting them to allow the credit referred to therein. The said representations have not been considered so far. Therefore, the present writ petitions are filed with the relief as stated supra.

5. The learned counsel for the petitioners after reiterating the above contentions and submitted that the said representations may be directed to be considered by the third respondent.

6. The learned Additional Government Pleader appearing for the third respondent submitted that the said representations will be considered on merits and appropriate orders will be passed, provided the third respondent is in a position to have access to the Goods and Services Tax Network (GSTN).

7. On the other hand, the learned standing counsel for the first respondent submitted that only when the Nodal Officer finds prima facie case in favour of the Assessee and gives his reasons, access to GST Network will be provided.

8. This Court at this stage is not expressing any view on the merits of the claim made by both parties, as it is inclined only to direct the third respondent to consider the representations filed by the petitioners on 13.11.2018 and to pass necessary orders on merits and in accordance with law by following due procedure as indicated supra. Needless to state that if the third respondent finds prima facie case in favour of the petitioners based on their representations, it is open to him to approach the first respondent and seek for access to GST

Network and if the first respondent is satisfied that the third respondent has found prima facie case in favour of the Assessee, such access shall be provided by the first respondent accordingly.

9. Accordingly, both these Writ Petitions are disposed of only by directing the third respondent to pass appropriate orders, after following the procedures as indicated supra as expeditiously as possible. The third respondent shall also provide an opportunity of hearing to the petitioners before passing the order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Goods and Service Tax Network
East Wing, 4th Floor
World Mark-1, Aerocity, New Delhi - 110 037.
2. The Commissioner of Central Taxes and Central Excise
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Newry Towers, No.2054, I Block, II Avenue
12th Main Road, Anna Nagar,
Chennai-600 040.

+1 cc to M/s.Rajkumar Jabhak, Advocate Sr.No. 89741

+1 cc to The Special Government Pleader (Taxes) Sr.No. 89788

AKM/02.12.19/4P-7C /

W.P.Nos.34084 & 34089 of 2018