BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.22726 of 2022

M/s.Sanmar Matrix Metals Limited,
87/1, Vadugapatti Village,
Viralimalai, Trichy-621316. ... Petitioner

Vs.

The Assistant Commissioner of CGST and Central Excise,
Tiruchirapalli I Division,
'B' Wing, First Floor,
No.1, Williams Road,
Cantonment, Trichy-620 001. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondent to grant re-credit of the Input Tax Credit of Rs.15,14,498/- in accordance with circular No.59/33/2018, dated 04.09.2018 issued by the Central Board of Indirect Taxes and Customs and Rule 93 (2) of the Central Goods and Services Tax Rules, 2017.

For Petitioner : Mrs.Radhika Chandra Sekhar
For Respondent : Mr.R.Nandakumar
Senior Standing Counsel
Assisted by Mrs.S.Ragaventhre
Junior Standing Counsel

ORDER

This writ petition is filed seeking for a writ of Mandamus directing the Respondent to grant re-credit of the Input Tax Credit of Rs.15,14,498/- (Rupees Fifteen Lakhs Fourteen Thousand Four Hundred and Ninety Eight only) in accordance with Circular, dated 04.09.2018 issued by the Central Board of Indirect Taxes and Customs and Rule 93 (2) of the Central Goods and Services Tax Rules, 2017.

2. The Petitioner is engaged in the business of manufacturing stainless steel cast components for the oil/gas, construction of mining, transportation and military sectors and registered as an assessee under the jurisdiction of the Respondent. The Petitioner has exported the goods which constitutes a zero-rated supply in terms of Section 16 (1) of the Integrated Goods and Services Tax, 2017. In terms of Section 16(2) of the Integrated Goods and Services Tax, an assessee making a zero-rated supply is eligible to avail input tax credit. Further, Section 16 (3) of the Integrated Goods and Services Tax provides an option to an assessee making zero-rated supply to pay IGST on exports and claim refund on such IGST paid or to export without payment of IGST under letter of undertaking and claim refund of unutilized Input Tax Credit. The Petitioner had chosen the latter option to effect zero rated supply

of goods without payment of IGST and claim refund of unutilized Input Tax Credit in terms of Section 16(3)(a) of the Integrated Goods and Services Tax Act.

3. It is the case of the Petitioner that the Petitioner being an exporter of goods without payment of IGST is eligible for refund of the unutilized Input Tax Credit in terms of Section 16(3)(a) of the Integrated Goods and Services Tax Act, 2017 read with Section 54(3) of the Central Goods and Services Tax Act, 2017. The Petitioner had also filed separate applications for refund of Input Tax Credit in FORM GST RFD-01A electronically on the common portal for the Months of December 2018, January 2019, February 2019 and April 2019. It is submitted that the refund applications for the months of December 2018, January 2019, February 2019 and April 2019 were processed and refund was issued and part of the claim has been sanctioned while a portion of the claim has been rejected. The Petitioner claimed refund of Rs.7,46,48,365/- (Rupees Seven Crores Forty Six Lakhs Forty Eight Thousand Three Hundred and Sixty Five only) after debiting the electronic credit ledger to the extent of refund claim. Out of the above claim of refund, a sum of Rs.15,28,972/- (Rupees Fifteen Lakhs Twenty Eight Thousand Nine Hundred and Seventy Two only) has been rejected in FORM-GST-RDO-06,

dated 14.08.2019 treating the same as ineligible inputs based on the verification report. It is submitted that assuming that the Respondent is right in rejecting the claim of Input Tax Credit, notice ought to be given in terms of Section 93 of the Act and once a claim of refund is rejected, it is incumbent on the part of the Respondent to re-credit the rejected claim. Section 93 (2) of the Central Goods and Services Tax Rules, 2017 is relied upon, which reads as under:

> ***"93.Credit of the amount of rejected refund claim***
> *(2) Where any amount claimed as refund is rejected under Rule 92, either fully or partly, the amount debited to the extent of rejection, shall be re-credited to the electroni credit ledger by an order made in FORM GST PMT-03."*

4. In this regard, reliance was sought to be placed on Circular No. 59/33/2018, dated 04.09.2018 which *interalia* provided that in cases, where the refund claim has been rejected on account of ineligibility of the said input tax credit under Section 17(1), 17(2) or 17(5) of the CGST Act, 2017 or under any other provision of the Act, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the claimant using FORM GST RFD-08 and for recovery of the alleged ineligible credit a demand notice under Section 73 of 74 of the CGST Act shall be issued simulataneously. Opportunity of personal hearing was not granted to the

Petitioner before issuance of GST RFD-08. The Petitioner has filed representations, dated 11.08.2021, 26.10.2021, 21.01.2022 and 21.04.2022 and they had not evoked any response.

5. The learned Senior Standing Counsel for the Respondent would submit that the orders would be passed on the above representations after considering the claim and after putting the Petitioner on notice within a period of eight weeks.

6. In view of the same, this Court does not express any view on the merits of the Petitioner's claim to refund or recredit of the Input Tax Credit. It is open to the Respondent to dispose of the representations of the Petitioner, dated 11.08.2021, 26.10.2021, 21.01.2022 and 21.04.2022 on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of this order. The Writ Petition stands disposed of. No costs.

28.09.2022

Index : Yes / No
Internet : Yes/ No
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To
The Assistant Commissioner of CGST and Central Excise,
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MOHAMMED SHAFFIQ, J.

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