BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.25919 of 2022

M/s.Yentop Manickavel Sons Edible Oils Private Limited,
Rep.,by its Director,
Mr.M.Mathavan,
No.123, Katchery Road,
Virudhunagar. ... Petitioner

Vs.

The Assistant Commissioner of CGST and Central Excise,
Virudhunagar Division,
Virudhunagar. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent order in original No.06/ST/2022 and quash the proceedings dated 13.10.2022 as unlawful and invalid and further direct the respondent to refund the service tax paid on ocean freight of Rs.3,44,943/- under RCM basis pertaining to the period of June 2017.

For Petitioner	:Mr.R.D.Ganesan
For Respondents	:Mr.N.Dilipkumar Senior Standing Counsel Asst.by :Mr.K.Prabhu Junior Standing Counsel

O R D E R

This Writ Petition is filed challenging the impugned order dated 13.10.2022, whereby, the refund application filed by the petitioner on IGST paid on ocean freight under RCM basis for the month of June 2017 was rejected.

2. A perusal of the impugned order would show that the petitioner had originally paid appropriate service tax on ocean freight under RCM basis and thereafter claimed refund primarily on the premise that the judgment of the Gujarat High Court in the case of ***M/s SAL Steel Ltd & others Vs. Union of India*** had struck down Rules 2(1) (d) EEC and 6(7CA) ibid and Explanation-V as ultra vires to Sections 64, 66B, 67 and 94 of the Finance Act, 1994. The impugned order has been passed rejecting the claim for refund stating that the impugned refund claim has been filed, solely on

the basis of the judgment dated 06.09.2019, passed by the Hon'ble High Court of Gujarat at Ahamedabad, in the case of SAL Steel Limited Vs. Union of India in R/Special Civil Application No.20785 of 2018. However, it has not attained finality inasmuch as the judgment has been challenged by the Union of India by filing a Special Leave Petition before the Hon'ble Supreme Court of India, in Diary No.27023/2020, which is pending.

3. It is submitted by the learned counsel for the petitioner and the learned Standing Counsel for the Respondent in unison that subsequent to passing of the impugned order, the order of the Gujarat High Court has been affirmed by the Hon'ble Supreme Court in the case of ***Union of India and another Vs. Mohit Minerals Private Limited*** in ***Civil Appeal No.1390 of 2020*** dated 19.05.2022.

4. It is further submitted by the learned counsel for the petitioner that though the above judgment has been rendered under the GST Regime, the same would have a material bearing on the levy of service tax on ocean

freight and thus the entire proceedings is vitiated inasmuch as it is contrary to the judgment of the Supreme Court in the case of ***Union of India and another Vs. Mohit Minerals Private Limited*** in ***Civil Appeal No.1390 of 2020*** dated 19.05.2022.

5. It was submitted by the learned Standing Counsel for the Respondent that the issue of refund that has been claimed by the petitioner with regard to levy of ocean freight would be re-examined taking into account the judgment of the Hon'ble Supreme Court in the case of *Mohit Minerals Private Limited* (cited supra).

6.In view of the fact that the above judgment of the Hon'ble Supreme Court deals with ocean freight, though under the GST regime, this Court is of the view that the impugned order dated 13.10.2022, has been made without reference to the same, despite the fact that it was submitted by the learned counsel for the petitioner. This Court is of the view that the impugned order rejecting the claim for refund only on the ground that the judgment of the Gujarat High Court has been challenged, without even dealing with the relevance and applicability of the judgment of the Hon'ble Supreme Court in the case of *Mohit Minerals Private Limited* (cited supra), shows non-application of mind.

7.In view of the same, the impugned order dated 13.10.2022, is set aside. The Respondent is directed to re-examine the claim of refund made by the petitioner in accordance with law and taking into account the applicability of the decision of the Hon'ble Supreme Court in the case of *Mohit Minerals Private Limited* (cited supra) with regard to levy of service tax on Ocean Freight. The above exercise shall be completed by the Respondent within a period of eight (8) weeks from the date of receipt of a copy of this order.

8.The writ petition stands disposed of on the above terms. There shall be no order as to costs.

17.11.2022

Index : Yes / No
Speaking Order : Yes / No

sbn

To

The Assistant Commissioner of CGST and Central Excise,
Virudhunagar Division,
Virudhunagar.

MOHAMMED SHAFFIQ, J.,

sbn

W.P.(MD)No.25919 of 2022

17.11.2022