IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.16611 & 16615 of 2023
and
W.M.P.No.15914 of 2023

W.P.No.16611 of 2023

M/s.Thryve Digital Health LLP,
Represented by its Authorised Signatory,
Suresh Balakrishnan,
8th floor (Module 1 to 4), Cambridge Tower,
Ramanujan IT City, Taramani Rajiv Gandhi Salai (OMR),
Chennai – 600 113. ... Petitioner

Vs.

1.Joint Commissioner (Appeals-II),
Office of the Commissioner of GST & Central Excise (Appeals-II),
Newry Towers, 2054, I-Block, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.

2.Assistant Commissioner of GST and Central Excise,
Perungudi Division, Chennai South Commissionerate, 8th Floor,
MHU Complex, Anna Salai, Nandanam, Chennai-600 003.

3.The Commissioner of Central Tax,
Chennai South Commissionerate,
8th Floor, MHU Complex, Anna Salai, Nandanam,
Chennai – 600 003.

4.Central Board of Indirect Taxes and Customs,
Department of Revenue, Ministry of Finance,
C Wing, 5th Floor, HUDCO-VISHALA Building,
Bhikaji Cama Place, R.K.Puram, New Delhi – 110 066. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order-In-Appeal No.81/2023-JC(GSTA-II) dated 11.05.2023, bearing DIN-20230559KU0000666ABE passed by the 1st respondent and quash the same and consequentially direct the 1st respondent to grant to the petitioner the refund of unutilised Input Tax Credit of INR 20,32,325/- for the period from April 2020 to March 2021.

For Petitioner : Ms.Shwetha Vasudevan and
Ms.Krithika Jaganathan for
Lakshmikumaran and Sridharan Attorneys

For Respondents : Mrs.R.Hemalatha
Senior Standing Counsel

<u>W.P.No.16615 of 2023</u>

M/s.Thryve Digital Health LLP,
Represented by its Authorised Signatory,
Suresh Balakrishnan,
8th floor (Module 1 to 4), Cambridge Tower,
Ramanujan IT City, Taramani Rajiv Gandhi Salai (OMR),
Chennai – 600 113. ... Petitioner

Vs.

1.Assistant Commissioner of GST and Central Excise,
Perungudi Division, Chennai South Commissionerate, 8th Floor,
MHU Complex, Anna Salai, Nandanam, Chennai-600 003.

2.The Commissioner of Central Tax,
Chennai South Commissionerate,
8th Floor, MHU Complex, Anna Salai, Nandanam,
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3.Central Board of Indirect Taxes and Customs,
Department of Revenue, Ministry of Finance,
C Wing, 5th Floor, HUDCO-VISHALA Building,
Bhikaji Cama Place, R.K.Puram, New Delhi – 110 066. ...
Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order bearing reference no.GEXCOM/RFD/GST/8739/2023-CGST-RANGE-1-DIV-PER-COMMRTE-CHENNAI(S) dated 23.03.2023 passed by the 1st respondent and quash the same and consequentially direct the 1st respondent to grant to the petitioner the refund of unutilised Input Tax Credit of INR 5,42,614/- for the period from April 2021 to March 2022.

For Petitioner : Ms.Shwetha Vasudevan and
Ms.Krithika Jaganathan for
Lakshmikumaran and Sridharan Attorneys

For Respondents : Mrs.R.Hemalatha
Senior Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the rejection of refund application dated 07.03.2022 filed by the petitioner for the assessment years 2020-2021 and 2021-2022 respectively and to set aside the impugned orders passed by the 1st respondent dated 23.03.2023 and 11.05.2023.

2. The case of the petitioner is that their unit comes under Special Economic Zone (hereinafter referred to as 'SEZ unit'). They had availed the services from the supplier. While availing the services, the supplier levied IGST and the said IGST has been paid by the petitioner to the supplier. After the receipt of the IGST, the supplier also remitted the same to the respondents in time.

2.1 Under these circumstances, the petitioner has filed the refund application dated 07.03.2022. Since the petitioner falls under the purview of the zero-rated supplies under the IGST Act, they are entitled for the refund of unutilised Input Tax Credit. The supplier had raised the invoice for IGST and based on the invoice, the entire amount has been paid by the petitioner.

2.2 However, the refund application filed by the petitioner came to be rejected by the respondent *vide* impugned orders dated 23.03.2023 and 11.05.2023. on the ground that the petitioner is a SEZ unit and they are not entitled to file any refund application, but only the supplier of service, is entitled to file the refund application.

3. Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the respondents also contented that in the present case, the refund application was made by the petitioner, which is a SEZ unit. As such, they are not entitled to file the said refund application. However, only the supplier of the SEZ unit is entitled as per Rule 89 of the CGST Rules, 2017. Therefore, the respondent has rightly rejected the refund application.

4. However, both the learned counsel had referred to the following judgments of this Court, wherein this Court allowed the refund application holding that the SEZ unit is entitled to file the refund application.

(i) ***Platinum Holdings Private Limited vs. Additional Commissioner***

of GST & Central Excise (Appeals-II), Assistant Commissioner of GST & Central Excise reported in ***2021 (10) TMI 630 – Madras High Court*** dated 11.08.2021.

(ii) ***M/s.ATC Tires Private Limited Vs. Joint Commissioner of GST & Central Excise (Appeals), Assistant Commissiner of CGST and Central Excise, Tirunelveli*** reported in ***2022 (4) TMI 1994 – Madras High Court*** dated 08.03.2022.

4.1 Therefore, since the issue has been already decided by this Court and by following the same, this Court is also inclined to allow the present writ petitions.

5. Therefore, by following the above orders passed by this Court in similar cases, the impugned orders dated 11.05.2023 and 23.03.2023 are set aside and the refund application dated 07.03.2022 filed by the petitioner is allowed. Further, this Court directs the 1st respondent to refund the amount of Rs.20,32,325/- for the period from April 2020 to March 2021 and Rs.5,42,614/- for the period from April 2021 to March 2022 along with

interest at 6% p.a. to the petitioner within 60 days from the date of receipt of a copy of this order. Accordingly, the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.11.2023

veda
Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order

To

1.Joint Commissioner (Appeals-II),
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Newry Towers, 2054, I-Block, II Avenue, 12th Main Road,
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KRISHNAN RAMASAMY, J.

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W.P.Nos.16611 & 16615 of 2023

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2/2