IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.17763 of 2020

ARS ENERGY PRIVATE LIMITED,
Rep by its Deputy Director,
N.Prabu,
No.D-109, 4th Floor, LBR Complex,
Anna Nagar East, Chennai 600 102.

... Petitioner

Vs.

1.Additional Commissioner (Appeals),
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2.Deputy Commissioner of GST and Central Excise,
Purasawalkam Division,
Chennai North Commissionerate,
Chennai 600 040.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the 1st respondent passed in AP.No.47 & 48/2020 (GSTA-I)(ADC) and quash the same and further direct the second respondent to process and order the refund of the amount pertains to the month of December, 2017 for Rs.10,53,594/- and January, 2018 for Rs.13,25,232/-.

For Petitioner : Mr.N.Murali

For Respondents : Mr.Rajnish Pathiyil,
Senior Panel counsel

ORDER

This writ petition has been filed challenging the impugned order dated 24.09.2020.

2. The learned counsel for the petitioner would submit that the issue involved in this writ petition is relating to the imposition of IGST on the Ocean Freight Charges by the respondent based on the Reverse Charge Mechanism (RCM). Further, he would submit that this Ocean Freight Charges will be normally paid by the exporter and the same will be included in the cost of the goods, which have been exported. In the present case, though the petitioner is paying IGST for the cost of goods that have been imported into India, the respondent had imposed the IGST on the Ocean Freight Charges on the petitioner based on the RCM.

3. Further, he would submit that a stand was taken on behalf of the importers in the case of ***Union of India vs. Mohit Minerals Pvt Ltd.,*** reported in ***2022 (5) TMI 968*** by the Hon'ble Apex Court, wherein it was held that since in the cost of the goods, the exporters will normally include the Ocean Freight Charges, the respondent cannot impose IGST and Ocean Freight Charges based on the RCM. When the importer will pay IGST on the cost of the goods imported, the said cost will include the Ocean Freight Charges also. In such view, the levy on IGST based on the RCM was set aside by the Hon'ble Division Bench of Gurajat High Court and the same was confirmed by the Hon'ble Apex Court *vide* the ***Mohit Minerals*** case (referred supra).

4. The learned counsel for the petitioner would submit that the petitioner was charged IGST on the Ocean Freight Charges for the period of December, 2017 for Rs.10,53,594/- and January, 2018 for Rs.13,25,232/-.

5. Further, it was submitted that prior to the law laid down by the Hon'ble Apex Court in the ***Mohit Minerals*** case (referred supra), an application for refund was filed by the petitioner. However, the said application was rejected by the Department on 18.06.2020. Thereafter, the petitioner had approached the Appellate Authority. The Appellate Authority had also rejected the said application vide order dated 24.09.2020. Hence, this writ petition.

6. Now the contention of the petitioner is that since the Hon'ble Apex Court had set aside the imposition of IGST on the Ocean Freight Charges, the petitioner is entitled for the refund of said amount. Hence, he would submit that the said refund application has to be re-considered by the respective Authority Concerned.

7. In reply, the learned counsel for the respondent would submit that the refund application was not only rejected on the aspect of non-acceptance of the contention of the petitioner but also on the aspect of

limitation. Therefore, he would request this Court to consider the facts and circumstances of the case and pass any appropriate orders.

8. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

9. In the present case, admittedly, the petitioner is entitled for refund of IGST, which was paid on the Ocean Freight Charges as held by the Hon'ble Apex Court in ***Mohit Minerals*** case (referred supra). Further, it is pertinent to note that since the Ocean Freight Charges was paid by the exporter, definitely the same would have been included in the cost of the goods. Thereafter, the petitioner, being an importer, had also paid IGST. In such view of the matter, the petitioner has paid double IGST on the Ocean Freight Charges alone. Hence, the Hon'ble Apex Court had held that no IGST can be collected on the Ocean Freight Charges from the importers and the said law laid down by the Hon'ble Apex Court will apply to the present case as well.

10. When the petitioner filed their refund application before the respondents, the said law was not laid down by the Hon'ble Apex Court. Hence, the refund application was rejected by the respondent. It also appears that the refund application was also rejected on the aspect of limitation.

11. Recently, this Court had passed an order in ***W.P.No.23604 of 2022*** dated 06.11.2023 [***M/s. Lenovo (India) Pvt. Ltd., vs. The Joint Commissioner of GST (Appeals-1) and others***], wherein it has been held that the fixation of limitation for making refund application is only directory in nature and the same is not mandatory. Accordingly, the limitation of 2 years, which was provided under Section 54(1) of the Goods and Services Tax Act, 2017, is directory in nature. In such case, if any reasons were provided for delay in filing the refund application, the same shall be considered and the said delay shall be condoned by the respondent.

12. Therefore, considering the law laid down by the Hon'ble Apex Court in ***Mohit Minerals*** case (referred supra) and this Court in ***W.P.No.23604 of 2022,*** this Court is of the view that the impugned order dated 24.09.2023 is liable to be set aside. Accordingly, this Court passes the following order:

(i) The impugned order dated 24.09.2023 is set aside;

(ii) While setting aside the said impugned order, this Court remits the matter back to the 2nd respondent for re-consideration.

(iii) The 2nd respondent is directed to consider the refund application as per the law laid down by the Hon'ble Apex Court and this Court as discussed above and pass appropriate orders after providing an opportunity of personal hearing to the petitioner.

(iv) It is left open to the both the parties to raise all the other issues before the Authority concerned and the respondents are directed to consider all the issues on its own merits and in accordance with law;

(v) All the above exercises shall be completed within a period of three months from the date of receipt of copy of this order.

13. With the above directions, this writ petition is disposed of. No cost.

28.11.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

1.Additional Commissioner (Appeals),
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Nungambakkam, Chennai 600 034.

2.Deputy Commissioner of GST and Central Excise,
Purasawalkam Division,
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KRISHNAN RAMASAMY.J.,

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