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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.9198 of 2023

and

W.M.P.(MD).Nos. 8299 and 8300 of 2023

Viterra India Pvt. Ltd.
Having its office at
73J/15, Perison Plaza, 60ft Road,
Polpettai, Thoothukudi,
Tamil Nadu, 628 002.

... Petitioner

vs.

- 1.The Union of India
Through the Secretary, Ministry of
Commerce Department of Commerce,
Udyog Bhavan, North Block,
New Delhi-110 001.
- 2.The Commissioner of GST and Central
Excise (Appeals)
Having his office at
Circuit Office, Madurai,
No.4, Lal Bahadur Shastri Marg,
Madurai.



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3. The Joint Commissioner of GST and Central Excise (Appeals),
Having his office at
Circuit Office, Madurai,
No.4, Lal Bahadur Shastri Marg,
Central Revenue Buildings,
Madurai-625 002.
4. The Commissioner of CGST & CE,
Tuticorin Circuit Office, Madurai,
No.4, Lal Bahadur Shastri Marg,
Central Revenue Buildings,
Madurai-625 002.
5. The Assistant Commissioner of CGST & CE,
Tuticorin Circuit Office, Madurai,
No.4, Lal Bahadur Shastri Marg,
Central Revenue Buildings,
Madurai-625 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned Order-in-Appeal, dated 03.12.2021 and Rectification Order, dated 28.06.2022 rejecting the appeal order passed by the Respondent No.2 and Respondent No.3 respectively and quash the same and direct the Respondents to forthwith sanction and grant the refund of Rs.45,93,793/- along with appropriate interest for the month of February 2018.



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For Petitioner : Mr.T.S.Ramakrishnan
For R-1 : No appearance
For R-2 to R-5 :Mr.R.Nanda Kumar,
Senior Standing Counsel

ORDER

This writ petition is filed for Certiorarified Mandamus, to quash the impugned order, dated 03.12.2021 and Rectification Order, dated 28.06.2022 and direct the Respondents to forthwith sanction and grant the refund of Rs. 45,93,793/- along with appropriate interest for the month of February 2018.

2. Heard Mr.T.S.Ramakrishnan, the Learned counsel appearing for the Petitioner and Mr.R.Nanda Kumar, the Learned Senior Standing Counsel, appearing for R-2 to R-5 and perused the material documents available on record.

3. The issue raised in this Writ petition was already allowed in favour of the assessee by the Hon'ble Gujarat High Court in the case of ***Mohit Minerals V. Union of India***, reported in ***[2020 (33) GSTL 321 (Guj.)*** whereby the



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Notification 8/2017-IT(Rate) dated, 28.07.2017 and the Entry of the Notification No.10 of 2017-IT(Rate), dated 28.06.2017 was struck down. Subsequently the Department preferred SLP before the Hon'ble Supreme Court, whereby the Civil Appeal was dismissed vide order dated 19.05.2022 reported in 2022 (61) GSTL 257 (SC) confirming the judgment of Gujarat High Court holding that the levy of GST on Ocean Freight Services vide the notification stated supra is ultra vires section 8 of the CGST Act as well as section 5(3) of the IGST Act and accordingly no GST is leviable on such service.

4. Based on the aforesaid judgment, the petitioner had filed rectification application dated 30.05.2022 under section 161 of CGST to rectify the Order-in-Original dated 03.12.2012, but the respondents rejected the application vide order dated 28.06.2022, stating that the petitioner is having remedy before the Goods and Service Tax Appellate Tribunal. However the Tribunal has not been constituted and thus the Tribunal is not in existence. Hence the petitioner had filed the present writ petition.



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5. It is an admitted fact that the issue of levy of GST on Ocean Freight Services is settled by the Hon'ble Supreme Court and the Notification 8/2017-IT(Rate) dated, 28.07.2017 and the Entry of the Notification No.10 of 2017-IT(Rate), dated 28.06.2017 is struck down as ultra vires. In such circumstances the respondents are not empowered to collect GST for the Ocean Freight Services and consequently the respondents are bound to refund the amount collected.

6. Therefore, the respondents are liable to refund an amount of Rs.45,93,793/- and the respondents are directed to refund the same. As far as the interest portion is concerned, this Court is leaving open to the parties to adjudicate the same.



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7. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
Sml/Ksa

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