**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 28.08.2023**

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

**W.P.(MD)No. 17162 of 2023**
**and**
**W.M.P.(MD)No.14356 of 2023**

Tvl.Lourdes Matha Cashew Industries,
Rep. by its Proprietor,
Jobrun Ghevarghese Varghese, aged 50 Years,
S/o.Varghese,
16/80b, Vattakottai,
Mankarai Post,
Kanniyakumari District. ... Petitioner

Vs.

1.The Union of India
Rep. by its Secretary to Government,
Finance Department,
Rajpath Marg,
Central Secretariat,
New Delhi-110 001.

2.Goods and Service Tax Network
East Wing, 4th Floor,
World Mark-1,
Aerocity,
New Delhi-110 037.

3.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005

4.The Joint Commissioner
Computer Systems,
Ezhilagam, Chepauk,
Chennai-600 005

5.The Assistant Commissioner (ST),
Kuzhithurai Assessment Circle,
Integrated Commercial Taxes Buildings,
Kalkulam Taluk,
Vilvatsagoshtam,
Kanniyakumari District-629 802.

6.The State Tax Officer
Thackalay 2 Assessment Circle at
Mead Street,
Nagercoil-629 001.

7.The GST Council
5th Floor, Tower -Ii, Jeevan Bharati Building,
Janpath Road, Connaught Place,
New Delhi-110 001. ... 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 pertaining to impugned notice in Na.Ka.No.A2/19/2021 dated 16.11.2022 issued by the sixth respondent quash the same as illegal and consequently directing the sixth respondent restraining to impose any condition to forgo eligible input tax credit as a condition for getting registration with retrospective effect and consider the petitioner's representation made to the seventh respondent dated 15.11.2021.

For Petitioner : Mr.Bobby John Pulickaparambil

For Respondents : Mr.R.Nandakumar, - for R1 to R3
Senior Standing Counsel
assisted by Mrs.S.Ragaventhree,
Junior Standing Counsel

Mr.M.Ramesh - for R4 to R6
Government Advocate

***ORDER***

This writ petition is filed for Writ of Certiorarified Mandamus to quash the impugned order, dated 16.11.2022.

2. Heard Mr.Bobby John Pulickaparambil, the Learned counsel appearing for the petitioner, Mr.R.Nandakumar, the Learned Senior Standing Counsel assisted by Mrs.S.Ragaventhree, the Learned Junior Standing Counsel appearing for the respondents 1 to 3, Mr.M.Ramesh, the Learned Government Advocate appearing for the respondents 4 to 6 and perused the material documents available on record.

***3.*** The petitioner is the Proprietrix carrying on the business in the name and style of 'Lourdes Matha Cashew Industries' situated in Kanyakumari District. The petitioner has engaged in selling of Cashew nuts from the year 1986. Before GST regime, the petitioner was an assessee under Tamil Nadu Value Added Tax (VAT) and he was having registration in TIN.33816184269. Subsequently, under the new regime, the petitioner's registration number is GSTIN.33AAZPV5192P1ZE. After registration with GST, the petitioner is bound by GST scheme which is introduced from 01.07.2017. The petitioner is having a Unit in the State of Kerala. The petitioner has completed the process of migration from the VAT to GST in State of Kerala and has also obtained a valid registration under the CGST/KSGST Act in GSTIN.32AAZPV5192P2ZF. However, when the petitioner was attempting to migrate from VAT to GST in Tamil Nadu, the application was not accepted and the process of migration could not be finalized. The petitioner has advertently omitted to take follow up action in the matter. Thereafter he submitted a letter, dated 16.05.2018 to the 5th respondent pointing out the difficulties. Thereafter, the registration is granted but the validity is granted only from 01.06.2018 though the liability to pay tax has commenced from 01.07.2017.

***4.*** But the petitioner is claiming to grant it from 01.07.2017 so that the petitioner could avail the benefits of Tax credit and submitted an application to this effect. The respondents have issued the impugned notice, dated 16.11.2022, wherein it has been stated that the petitioner's application would be considered with certain conditions and the said conditions are extracted hereunder:

> *i. Details of outward supplies due to be reported under GST for the period from 01.07.2017 to 31.05.2018*
>
> *ii. Details of inward supplies for which Input Tax Credit needs to be availed for the period from 01.07.2017 to 31.05.2018*
>
> *iii. Details of output liability if any payable after adjusting the Input Tax Credit proposed to be made available*
>
> *iv. Undertaking to forgo the Input Tax Credit if any as a result of extending the validity retrospectively with effect from 01.07.2017*

The petitioner is ready and willing to comply with the conditions 1, 2, and 3. However, the petitioner expressed his difficulty to comply with the 4$^{th}$ condition to forgo the Input Tax Credit. The reason stated in the impugned order is that the validity is being granted retrospectively, then the petitioner ought to forgo. It is seen that the petitioner is already as assessee under VAT. The petitioner is seeking to migrate from VAT to GST. Input Tax Credit is available in VAT regime also. In such circumstances the petitioner would have the details and evidence to substantiate his claim of Input Tax Credit and there cannot be difficulty to avail Input Tax credit for the said period. Therefore, the impugned order directing to forego Input Tax Credit is unreasonable and cannot be sustained and the same is liable to be quashed.

***5.*** Accordingly, the impugned order, dated 16.11.2022 is hereby quashed as far as the $4^{th}$ condition is concerned. The petitioner shall furnish the details as stated in condition 1 to 3 and thereafter the respondents shall consider the application for migration. The Input Tax Credit shall be granted based on the details and evidence that would be submitted by the petitioner.

*6.* With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
ksa

**28.08.2023**

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**S.SRIMATHY, J**

**ksa**

**Order made in**
**W.P.(MD)No. 17162 of 2023**

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