BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.19991 of 2023
and
W.M.P.(MD).No.16488 of 2023

M/s.South India Krishna Oil and
Fats Pvt Ltd,
Represented by its Manager (Taxation)
Vikas Rathor,
RS 280, Semangalam Post,
Via.Adiyakkamangalam,
Thiruvarur – 611 101. ... Petitioner

Vs.

The Assistant Commissioner of
GST – Central Tax,
Central Excise, Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur – 613 007. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in the impugned order in original order No.15/2023-GST Refund dated 18.07.2023 on the file of the respondent and quash the same and direct the respondent to dispose of the refund application dated 18.05.2023 filed by the petitioner in accordance with law.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mr.R.Nanda Kumar,
Senior Standing Counsel,
Assisted by
M/s.S.Ragaventhre,
Junior Standing Counsel.

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order passed in Order-in-Original No.15/2023-GST refund dated 18.07.2023 and consequently, direct the respondent to dispose of the refund application dated 18.05.2023.

2. The petitioner is a private limited firm incorporated under the Company Act, 1956 with GST registration. The importation of goods is part and parcel of the petitioner's business and the same suffers the levy of customs duties. However, the respondent has imposed GST on service and freight. The issue of imposition of GST on Service and Freight, when it has already suffered levy of customs duties was considered by the Hon'ble Gujarat High Court in Mohit Minerals Pvt. Ltd., Vs. Union of India where the notification was struck down. Moreover, the revenue preferred an appeal before the Hon'ble Supreme Court in Union of India vs. Mohit Minerals Pvt. Ltd., which is reported in 2022

(61) G.S.T.L.257 (S.C) where the striking down of said notification was upheld by the Hon'ble Supreme Court.

3. The High Court of Gujarat in its judgment has held as under:

> "*133. It appears that despite having levied and collected the integrated tax under the IGST Act, 2017, on import of goods on the entire value which includes the Ocean Freight through the impugned notifications, once again the integrated tax is being levied under an erroneous misconception of law that separate tax can be levied on the services components (freight), which is otherwise impermissible under the scheme of the GST legislation made under the CA Act, 2016.*"

4. The Hon'ble Supreme Court after considering the appeal filed by Revenue, has dismissed the appeal and has held as under:

> *"147. We are in agreement with the High Court to the extent that a tax on the supply of a service, which has already been included by the legislation as a tax on the composite supply of goods, cannot be allowed."*

Subsequently, the same order was also followed by the High Court of Madras by the Hon'ble Division Bench in W.P.(MD)No. 10330 of 2019 batch vide order, dated 29.09.2022 and confirmed the order of the Gujarat High Court.

5. However, the respondents have passed the impugned order stating that the Gujarat High Court judgment is not binding of them. But the respondents failed to take note of the fact that the Hon'ble Supreme Court had dismissed the

revenue appeal. Moreover, the High Court of Madras, being the Jurisdictional High Court has followed the Hon'ble Supreme Court judgment and held in favour of the assessee. But the respondents have stated in the counter as under that, *"the tax payer was not one among the applicant before the Apex Court and therefore, the verdict of Apex Court cannot be treated as "In Rem"*. But the issue is whether the imposition of GST on Service and Freight, when it has already suffered levy of customs duties was considered and the notification which had imposed GST was struck down, while that being so the respondents cannot state that the judgment is only in persona and not in rem.

6. Infact the counter filed by the respondents stating that the judgment cannot be treated as "In Rem", is total non-application of mind and misinterpretation, since the notification issued by the Government itself is struck down then the notification is not existence in the eye of law. In such circumstances the judgment is not in rem would not arise, since the respondents would not have power to impose GST. When there is no power to the respondents, then the imposition of GST is without any authority.

7. The respondents further submitted that the refund application ought to be submitted within a period of 2 years, but in the present case the petitioners had submitted beyond the period two years. Since the issue was pending before

various Courts subsequently, it has been settled by the Hon'ble Supreme Court, then the respondents cannot reject the plea of refund on the basis of limitation. Therefore, the respondents are directed to refund the claim and disburse the amount within a period of four (4) weeks from the date of receipt of a copy of this order.

8. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.09.2023

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

S.SRIMATHY, J.

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