IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.2222 of 2024
&
WMP Nos.2408 & 2409 of 2024

M/s.M.R.P. Garments,
No.1/4, Palayakadu,
Uthukuli Main Road, Mannarai,
B.S.Sundaram Road,
Tirupur-641 601. ... Petitioner

vs

1. The Assistant Commissioner,
   Office of the Deputy Commissioner CGST & C.Ex.
   Tirupur Division
   2nd Floor, 51, Elementary School Street,
   Kumar Nagar,
   Tirupur-641 603.

2. The Branch Manager,
   City Union Bank Limited,
   94 94 1, Court Street,
   Tirupur – 641 601. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records of 1st Respondent's notice dated 30.11.2023 bearing reference C.No.V/61/15/70/2004-Adj and quash the same and direct the Respondents to raise the attachment of the Petitioner's bank Account No.510909010029026 (IFSC : CIUB0000006) and allow the Petitioner to operate the said bank account for the operation of its business.

For Petitioner : Mr.Ranish Kumar

For Respondents : Mr.T.Ramesh Kutty
Senior Standing Counsel

ORDER

A notice of recovery dated 20.11.2023 is the subject of challenge in this writ petition.

2. The petitioner is a manufacturer of cotton knitted under garments. The petitioner was clearing final products without payment of duty by availing an exemption in terms of notification No.8/2003-CE dated 01.03.2003. Proceedings were initiated against the petitioner on the ground that the petitioner is not entitled to such exemption. Such proceedings culminated in an order-in-original dated 03.03.2005 confirming the tax demand along with penalty

thereon. The matter was carried in appeal by the petitioner before the Commissioner of Excise (Appeals). The appellate authority disposed of the appeals by order dated 29.06.2005. While the tax demand was affirmed, the appellate authority directed the original authority to verify the petitioner's eligibility for cenvat credit and extend such credit if the petitioner was found to be eligible for the same. The petitioner assailed the appellate order before the Customs, Excise and Service Tax Appellate Tribunal (the CESTAT). As on date, the appellate order continues to hold good because the appeal before the CESTAT was dismissed on the ground that the petitioner did not comply with the conditions imposed. In these circumstances, the impugned recovery notice was issued.

3. Learned counsel for the petitioner referred to the appellate order and contended that the tax liability of the petitioner is likely to be revised downward if the benefits of cenvat credit were to be extended to the petitioner. He further submits that the impugned

recovery notice was issued by treating the petitioner as falling within the category of 'arrears' as per circular No.1081/02/2022-CX of the Central Board of Indirect Taxes and Customs, dated 19.01.2022. He submits that the petitioner should not have been treated as falling within the category 'arrears' in as much as the matter was remanded by the appellate authority to the original authority.

4. In response to these contentions, Mr.Ramesh Kutty, learned senior standing counsel, submits that the petitioner's case falls within the category 'arrears' because the appellate authority affirmed the decision of the original authority and only directed that the petitioner's eligibility for cenvat credit be verified. He also pointed out that the petitioner had applied under the SVLDRS, but that such application could not be processed because the petitioner did not pay amounts payable in terms of such scheme.

5. The operative portion of the appellate order is as under:

"... Respectfully following the ratio of the above cited decisions, I deem it fit to allow the claims of all the appellants subject, of course, to the availability and verification of duty paid documents and their eligibility within the provisions of CENVAT Credit Rules and other laws in force. The impugned orders stand modified to the above."

6. From the above extract, it follows that the appellate authority modified the impugned order to the extent of affirming the tax demand subject to verification of the petitioner's eligibility for cenvat credit and the extension of benefit of such credit, if applicable. The said order has attained finality in view of the rejection of the petitioner's appeal before the CESTAT. In those circumstances, it was necessary for the original authority to give effect to the order of the appellate authority. A remand is necessary for such purpose.

7. Meanwhile, the recovery notice was issued by treating the petitioner under the category of 'arrears'. On examining circular

No.1081, such circular specifies that if there is a remand for *de novo* adjudication, the case will not fall within the category of 'arrears'. As indicated earlier, the appellate authority did not set aside the order of the original authority and remand the matter for *de novo* adjudication. Hence, the conclusion that the petitioner's case falls within the category of 'arrears' does not contain any infirmity.

8. Nevertheless, since the direction issued by the appellate authority was not given effect to, W.P.No.2222 of 2024 is disposed of by directing the first respondent to examine the petitioner's claim for cenvat credit. In order to facilitate such exercise, the petitioner is permitted to submit all relevant documents in such regard within two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the first respondent is directed to consider the petitioner's eligibility for cenvat credit, and, if it is found that the petitioner is eligible for the same, extend such credit to the petitioner and thereafter compute the amount due and payable by the

petitioner. The bank attachment shall continue to remain in force subject to the outcome of the remanded proceedings. However, the first respondent is restrained from appropriating amounts from the bank account in the meantime.

9. W.P.No.2222 of 2024 is disposed of on the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

11.03.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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To

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