



W.P.No.7857 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.03.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7857 of 2024
and W.M.P.No.8811 of 2024

M/s.Modine Thermal Systems Pvt. Ltd.,
Represented by its Authorized Signatory,
Ms.R.Annapoorani,
K7, Sipcot Industrial Park,
Mambakkam Village, Sunguvarchatiram,
Kancheepuram, Tamil Nadu 602 106.

... Petitioner

-VS-

1.Joint Commissioner,
Chennai Outer Commissionerate,
Newry Towers: No.2054-I, II Avenue,
Anna Nagar, Chennai 600 040.

2.Joint Commissioner,
Office of the Commissioner of GST and Central Excise,
Audit-II Commissionerate,
No.692, 6th Floor MHU Complex,
Anna Salai, Chennai 600 035.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to the Impugned Order-in-Original No.96/2023-GST-(JC) in C.No.GEXCOM/ADJN/GST/JC/746/2023-ADJN with DIN: 20231259XL000000CCID dated 30.12.2023 passed by the first respondent and to quash the same.

For Petitioner : Mr.Raghav Rajeev
for M/s.Lakshmi Kumaran and Sridharan

For Respondents : Mr.K.Mohanamurali, Sr. SC

ORDER

An assessment order dated 30.12.2023 is the subject of challenge in this writ petition. The petitioner is a manufacturer and supplier of oil coolers. Pursuant to an audit, the petitioner received



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show cause notice dated 27.09.2023. Such show cause notice was replied to by the petitioner. After a hearing, the impugned order was issued on 30.12.2023.

2. Learned counsel for the petitioner invited my attention to the impugned order and, in particular, to the issue relating to the classification of oil coolers as heat exchangers by the petitioner. By pointing out that an oil cooler falls within HSN 8419 since it performs the function of a heat exchange unit, learned counsel pointed out that a certificate from a Chartered Engineer was obtained and submitted before the assessing officer to corroborate the contention that the petitioner had correctly classified it under HSN 8419. By turning to the findings in the impugned order in this regard, learned counsel submitted that the respondent concluded that there was misclassification on the basis that a radiator and an oil cooler perform the same functions and also by referring to the definitions of the two terms. Since the material placed on record by the petitioner was not



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taken into consideration, he submits that the impugned order calls for interference. He further submits that the petitioner was directed to pay an aggregate sum of Rs.34,38,17,664/- towards this head of demand and that other heads of demand are insubstantial by comparison. He also points out that no finding was recorded with regard to alleged non reversal of Input Tax Credit on credit notes.

3. Mr.K.Mohanamurali, learned senior standing counsel, accepts notice for the respondents. He points out that the admitted position is that the petitioner replied to the show cause notice and that a personal hearing was provided on 14.11.2023. By referring to the impugned order, learned senior standing counsel also points out that it is a detailed order issued after considering all submissions. Hence, he submits that no interference is warranted.

4. The documents on record evidence that the petitioner had replied to the show cause notice and participated in proceedings,



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including by attending a personal hearing on 14.11.2023. On perusal of the impugned order, it follows that about eight issues were considered therein. One of the issues relates to mis-classification of oil coolers. The main grievance of the petitioner is that the Chartered Engineer's certificate was disregarded while concluding that oil coolers should be classified under chapter 8708 instead of 8419. This contention may be raised by the petitioner in course of appellate proceedings because the overall facts and circumstances do not justify interference under Article 226 of the Constitution.

5. The impugned order is dated 30.12.2023 and the period of limitation, without condonation, expires by the end of this month. Since the petitioner challenged the order by way of this writ petition, which was filed on or about 16.03.2024, it is just and necessary that if a statutory appeal is filed, such appeal is received and disposed of on merits.



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6. Therefore, W.P.No.7857 of 2024 is disposed of by permitting the petitioner to file a statutory appeal before the appellate authority within *three weeks* from the date of receipt of a copy of this order. If such appeal is presented within the aforesaid *three weeks*, the appellate authority is directed to receive and dispose of the same on merits in accordance with law. No costs. Consequently, W.M.P.No.8811 of 2024 is closed.

26.03.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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To

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SENTHILKUMAR RAMAMOORTHY,J

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