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W.P.No.21008 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21008 of 2022

M/s.SRC Projects Private Limited,
Represented by its Chief Executive
Managing Director M.Mahudeswaran

... Petitioner

Vs.

The Assistant Commissioner of GST and
and Central Excise,
Salem I Division, Varalakshmi Orchid,
3rd Floor, 106, Ramakrishna Road,
Salem – 636 007.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in passing the Impugned Order in C.No.V/15/34/09/2014-GST, Order-in-Original S.No.02/2022-GST (AC) dated 01.06.2022 and quash the Impugned Order and direct the respondent to allow the petitioner to carry forward the accrued cenvat credit to the electronic credit ledger of the GST regime as directed by this Court in its Order dated 22.02.2022 arising out of W.P.No.1092 of 2019.



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For Petitioner : Mr.G.Natarajan
For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

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ORDER

The petitioner is before this Court against the Impugned Order in C.No.V/15/34/09/2014-GST, Order-in-Original S.No.02/2022-GST (AC) dated 01.06.2022.

2. The Impugned Order dated 01.06.2022 has been passed pursuant to a detailed order passed by this Court in W.P.Nos.528, 1092 and 1160 of 2019 on 22.02.2022.

3. This Court while passing its Order dated 22.02.2022, considered the difficulties arising out of the implementation of the respective GST enactments and held / observed as under:-

“48. For all these reasons, this Court, having considered the peculiar facts and circumstances of the case, is inclined to dispose of these writ petitions with the following orders:

(i) That the impugned orders in these writ petitions are liable to be set aside, accordingly are set aside. As a sequel, the matters are remitted back to the respondents for reconsideration. While



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reconsidering the same, the authority concerned, who has to deal with the applications of the petitioners, shall consider and dispose of these applications under Section 142(3) of the CGST Act, 2017.

(ii) While reconsidering the said applications, the claim made by the petitioners need not be considered for the purpose of refund of the claim made by them. However, the said claim made by the petitioners can very well be considered for the purpose of permitting the petitioners to carry forward the accrued credit to the electronic credit ledger of the GST regime.

(iii) After considering the said applications, as indicated above, the necessary order shall be passed by the respondents within a period of six weeks from the date of receipt of a copy of this order. It is made clear that, before passing the orders as indicated above, an opportunity of being heard shall be given to the petitioners, so that the petitioners can put forth their case by providing all necessary inputs to the satisfaction of the authorities to take a decision thereon.

49. With these directions, all these Writ Petitions are ordered accordingly. However, there shall be no order as to costs.”

4. Pursuant to the aforesaid Order of this Court, the respondent has now passed the Impugned Order on 01.06.2022 whereby the request of the petitioner to allow re-credit of the amount of tax paid by the petitioner on reversed charged basis as recipient of royalty services from the Government has been



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rejected stating that Section 142(3) of the Central Goods and Sales Tax (CGST) Act, 2017 would not come to the rescue of the petitioner.

5. It appears that against the Common Order passed by the Writ Court in W.P.Nos.528, 1092 and 1160 of 2019, a Writ Appeal was also filed before the Division Bench of this Court in W.A.No.1648 of 2022. However, the Writ Appeal was disposed by the Division Bench of this Court vide Order dated 17.08.2022.

6. Thus, it is evident that although the petitioner was not entitled to cash refund under Section 142(3) of CGST Act, 2017, the petitioner is entitled to recredit by virtue of the aforesaid Order.

7. The learned Senior Standing Counsel for the respondent on the other hand has relied on the decision of the Jharkhand High Court in **M/s.Rungta Mines Limited Vs. The Commissioner of Central Goods & Services Tax and Central Excise, Jharkhand and others** in W.P.(T) No.2245 of 2020 pronounced on 15.02.2022.



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8. The Order of the Jharkand High Court cannot be applied in view of the Order passed by this Court in W.P.Nos.528, 1092 and 1160 of 2019 vide Order dated 22.02.2022. Therefore, this Writ Petition deserves to be allowed.

9. In the result, this Writ Petition is allowed in the light of the observations of this Court in its Order dated 22.02.2022 in W.P.Nos.528, 1092 and 1160 of 2019.

10. The respondent is directed to allow the petitioner to take recredit of the amount paid by the petitioner on reverse charge basis belatedly on 30.12.2017 as the Input Tax Credit in its Electronic Credit Ledger. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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To

The Assistant Commissioner of GST and
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