



W.P.No.26927 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.26927 of 2021
and W.M.P.No.28365 of 2021

M/s.Engineers India Ltd.,
Represented by its
Executive Director (HR & Legal),
Mr.A.Bhowmik,
Engineers India Bhawan,
Plot No.F-9, 1st main road,
SIPCOT IT park, Siruseri,
Chennai-603 103.

... Petitioner

-VS-

The Assistant Commissioner (Central Tax),
Maraimalai Nagar Division,
Plot No.40, Ranga Colony,
Rajakilpaukam, Chennai-600 073.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records comprised in Order-In-Original R/O ARN:AA330721029914B dated 13.07.2021 on the file of the respondent, quash the same and direct the respondent to refund SGST amount of Rs.57,98,945/-.

For Petitioner : Mr.P.Purushotham



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For Respondents : Mr.A.P.Srinivas, Senior Standing Counsel

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ORDER

The petitioner assails an order dated 09.09.2021 rejecting the refund claim of the petitioner.

2. The petitioner is a company engaged in providing design, engineering, procurement, supply and related services in respect of large construction projects. As per Section 13 of the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT Act), the employer was required to deduct TDS while making payments to contractors, such as the petitioner, and the contractor was entitled to adjust the TDS amount against tax liability under the TNVAT Act. Upon the entry into force of the Central Goods and Services Tax Act, 2017 (the CGST Act) on 01.07.2017, the petitioner asserts that it was entitled to transition the TDS credit as Input Tax Credit (ITC) under the CGST Act. Since the eligibility of persons such as the petitioner to transition the credit into the GST regime was the subject of the litigation before this Court, the petitioner deposited a sum of Rs.57,98,945/- towards the tax demand under the GST regime. Such deposit was made



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under protest.

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3. Thereafter, this Court disposed of a batch of writ petitions, *W.P.No.9991 of 2020 batch, M/s.DMR Constructions v. The Assistant Commissioner, Commercial Tax Department, Rasipuram, Namakkal District (DMR Constructions)*, by order dated 26.02.2021, concluding that the petitioners therein were entitled to transition the TDS under the TNVAT Act in terms of Section 140 of the TNGST Act, 2017. In view of said judgment, learned counsel for the petitioner contends that the petitioner is entitled to refund of sum of Rs.57,98,945/-, which was paid upon wrongful reversal of the transitioned credit. By referring to the impugned order, learned counsel submits that the said order is unreasoned and was issued on the ground that the claim for refund was made under the wrong category, i.e. “Any Others”. According to learned counsel, a refund claim cannot be rejected merely because the application was filed under the wrong category. He also points out that the categories provided under the circular do not envisage refund claims such as the petitioner's.

4. In response to these contentions, Mr.A.P.Srinivas, learned senior



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standing counsel, submits that the refund claim does not fall within the scope of Section 54 of the CGST Act, which only enables refund in case of unutilised ITC on account of inverted duty structure or unutilised ITC on account of zero-rated exports. He further submits that the order of this Court in *DMR constructions* was considered by the Kerala High Court in *FINS Engineers and Contractors (P) Limited v. Superintendent, Central Tax and Central Excise Ayyanthole Range and others, order dated 07.12.2023 in WP(C)No.10596 of 2023*, whereby it was concluded that the order of this Court was issued without taking into account the proviso to Section 140 of the CGST Act. Therefore, he submits that the petitioner should either challenge the reversal of the ITC or file a statutory appeal.

5. The contention of learned counsel for the petitioner is that the petitioner was entitled to transition and set off the credit accumulated under the TNVAT Act in respect of tax liability under the CGST Act. Since the eligibility to transition credit was the subject of the pending litigation, the tax demand was paid under protest. After this Court held that persons such as the petitioners are entitled to transition such credit, it was contended that



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the petitioner is entitled to refund of the sum paid under protest. In effect, the petitioner's refund claim is in respect of amounts allegedly levied and paid erroneously. This contention is not accepted by learned senior standing counsel for the respondent, who submits that the tax liability arose under the CGST Act and that tax was not imposed unlawfully or erroneously.

6. On examining the impugned order, it is evident that the refund claim was rejected on the ground that the application was filed under the category “Any Others”. As pointed out by learned counsel for the petitioner, a refund claim cannot be rejected merely on the ground that such refund claim does not fall within the specific categories enumerated in Circular No.125/44/2019-GST dated 18.11.2019. It should also be noticed, in this regard, that sub-section (1) of Section 54 of the CGST Act appears to be wide enough to embrace any claim for refund of tax or interest provided such claim is made within a period of two years reckoned from the relevant date. Since the order impugned was issued without providing adequate reasons for rejection of the refund claim, the said order calls for



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interference.

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7. Therefore, the order impugned is quashed and the matter is remanded for reconsideration. The respondent is directed to reconsider the application in accordance with law by also taking into account the judgment of this Court in *DMR Constructions* and any other precedents. After providing a reasonable opportunity to the petitioner, a fresh order shall be issued on the refund claim within a maximum period of two months from the date of receipt of a copy of this order.

8. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

07.02.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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