WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.5301 of 2023
and
W.M.P.(MD) No.4974 of 2023

M/s.L.S.Mills,
Represented by its CFO
M.Manikandan,
351, Madurai Road,
Theni. ... Petitioner

Vs.

1.The Assistant Commissioner of CGST
& C. Excise,
Dindigul-II Division,
Dindigul.

2.The Commissioner of GST
& Central Excise (Appeals),
Coimbatore at Madurai,
C.R.Building, Bibikulam,
Madurai – 625 002. ... Respondents

[R2 is *suo motu* impleaded by this order today]

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned Order-in-Original No.MAD-GST-DG2-ASC-06-2022 dated

https://www.mhc.tn.gov.in/judis

WEB COPY

14.12.2022 issued by the respondent and quash the same as illegal, arbitrary and against the judicial discipline and also against the principles laid down by the Hon'ble Supreme Court in the case of Union of India Vs. M/s.Mohit Minerals Pvt. Ltd., in Civil Appeal No.1390 of 2022, dated 19.05.2022.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.R.Nandha Kumar
Senior Standing Counsel

O R D E R

In this Writ Petition, the petitioner has challenged the impugned Order-in-Original No.MAD-GST-DG2-ASC-06-2022 dated 14.12.2022 passed by the respondent.

2. By the impugned order, the respondent has confirmed the demand proposed in Show Cause Notice No.29/2022 dated 25.08.2022. The operative portion of the impugned order reads as under:-

15. In view of the above I pass the following order:

ORDER

a) I demand an amount of Rs.12,22,729/- (IGST: 4,18,975/- + CGST: Rs.4,01,877/- + SGST: Rs.

https://www.mhc.tn.gov.in/judis

WEB COPY

4,01,877/-). (Rupees Twelve lakhs twenty two thousand seven hundred and twenty nine only) towards wrongly availed Input Tax credit as detailed in Para 4.1 above and recover under Section 73(1) of CGST Act, 2017/Tamil Nadu GST Act 2017 read with Section 20 of the IGST Act, 2017;

b) I appropriate the amount of Rs.3,20,510/- (CGST: Rs.1,60,255 + SGST: Rs.1,60,255/-) reversed towards wrongly availed Input Tax credit vide DRC 03 (D13304220544247/ 3304220544279/ 330422054303) dated 28.04.2022 against the demand made in Sl. No. 15 (a) above;

c) I demand interest at the appropriate rate on the amount demanded [in para 15 (a)] and recover under section 73(1) of CGST Act, 2017/ Tamil Nadu GST Act 2017 read with section 50(3) of CGST Act, 2017/Tamil Nadu GST Act 2017 and Section 20 of the IGST Act, 2017;

d) I demand an amount of Rs.37,00,693/-(IGST Rs. 1,98,307 + CGST Rs.17,51,193 + SGST Rs. 17,51,193) (Rupees Thirty seven lakhs six hundred and ninety three only) towards wrongly availed Input Tax credit [as detailed in Para 4.2 above] and recover under Section 73(1) of CGST Act, 2017/ Tamil Nadu GST Act, 2017 read with Section 20 of the IGST act, 2017;

e) I appropriate an amount of Rs.4,05,445/- (IGST: Rs.11319/- + CGST: Rs.1,97,063/-+ SGST: Rs. 1,97,063/-) reversed towards wrongly availed Input Tax Credit vide DRC 03 (D13304220544247/3304220544279) dated 28.04.2022 against the demand made in Sl.No.15 (d) above;

WEB COPY

f) I demand an interest on the amount of Rs. 37,00,693/- [demanded in para 15 (d) above] and recover under section 73(1) of CGST Act, 2017/Tamil Nadu GST Act 2017 read with section 50(3) of CGST Act, 2017/ Tamil Nadu GST Act 2017 and Section 20 of the IGST act, 2017;

g) I demand an amount of Rs.98,97,188/- [Rupees Ninety Eight Lakhs ninety seven thousands one hundred and eighty eight only] towards non-payment of IGST under RCM on the Ocean freight charges [as detailed under para 4.3 and para 13.3 above] and recover under Section 73(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

h) I demand interest on the amount of Rs. 98,97,188/- [demanded vide 15 (g) above] and recover under Section 73(1) of the CGST Act, 2017 read with section 50 (1) of CGST Act, 2017 and Section 20 of the IGST Act, 2017;

i) I demand an amount of Rs.4,14,152/- (CGST Rs. 2,07,076/- and SGST Rs.2,07,076/-) (Rupees Four lakhs fourteen thousand one hundred and fifty two only) towards non-payment of GST under RCM on receipt of service from Government Department [as detailed in Para 4.4 above] and recover under Section 73(1) of the CGST Act, 2017/ Tamil Nadu GST Act 2017;

j) I demand an interest on the amount of Rs. 4,14,152/- [demanded in 15 (i) above] and recover under section 73(1) of the CGST Act, 2017/ Tamil Nadu GST Act 2017 read with section 50 (1) of CGST Act, 2017/ Tamil Nadu GST Act 2017; and

WEB COPY

k) I impose Penalty Rs.15,23,476/- @ 10% [detailed in below table] on the tax demanded / due; under Section 73(9) read with Section 122(2)(a) of the CGST Act, 2017/Tamil Nadu GST Act, 2017 and read with Section 20 of the IGST Act, 2017 for non-payment of IGST/CGST/SGST/wrong availment and utilisation of ITC for each contraventions mentioned above in Sl No. (a), (d), (g) and (i).

	Total amount	%	Penalty imposed
(a)	Rs. 12,22,729	10%	1.22,273
(d)	Rs. 37,00,693	10%	3,70,069
(g)	Rs. 98,97,188	10%	9,89,719
(i)	Rs. 4,14,152	10%	41,415
	Total		15,23,476

16. This order is issued without prejudice to any other action that may be initiated against the taxpayer under the provisions of the Act or the Rules, or under any other law for the time being in force in India.

17. The Show Cause Notice bearing SCN No. 29 /2022- Asst. Commr dated 25.08.2022 stands disposed in the above terms.

3. It is noticed that as far as the tax confirmed in the above paragraph 15(g) and the interest in paragraph 15(h) are concerned, the issue is now covered in favour of the petitioner in terms of the decision of

https://www.mhc.tn.gov.in/judis

WEB COPY

the Hon'ble Supreme Court in **Union of India** Vs. **M/s.Mohit Minerals Pvt. Ltd.**, 2022 (61) GSTL 257 (SC) : 2022 INSC 596. The operative portion of the said decision reads 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.
>
> **E Conclusion**
>
> **148**. Based on the above discussion, we have reached the following conclusion:
>
> (i) The recommendations of the GST Council are not binding on the Union and States for the following reasons:
>
> (a) The deletion of Article 279B and the inclusion of Article 279(1) by the Constitution Amendment Act 2016 indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective of the GST regime to foster cooperative federalism and harmony between the constituent units;
>
> (b) Neither does Article 279A begin with a non-obstante clause nor does Article 246A state that it is subject to the provisions of Article 279A. The Parliament and the State legislatures possess simultaneous power to legislate on GST. Article 246A does not envisage a

WEB COPY

repugnancy provision to resolve the inconsistencies between the Central and the State laws on GST. The 'recommendations' of the GST Council are the product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation; and

(c) The Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A (4) are binding on the legislature's power to enact primary legislations;

(ii) On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service;

(iii) The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient – in this case the importer – by

https://www.mhc.tn.gov.in/judis

WEB COPY

Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;

(iv) Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation;

(v) The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

4. Thus, the demand confirmed in paragraph 15(g) and paragraph 15(h) of the impugned order is dropped.

5. As far as the rest of the demand arising out the mis-match between the Input Tax Credit availed and the tax paid by the supplier and the demand of tax on the renewal charges paid for Factory License are concerned, the same can be adjudicated by the petitioner before the

https://www.mhc.tn.gov.in/judis

WEB COPY

Appellate Commissioner. Therefore, the petitioner can file an appeal on the rest of the issues.

6. Under these circumstance, while dropping the demand in paragraph 15(g) and paragraph 15(h) of the impugned order, liberty is given to the petitioner to file a statutory appeal before the Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai, C.R.Building, Bibikulam, Madurai – 625 002, as far as other demands confirmed *vide* the impugned order are concerned.

7. The Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai, C.R.Building, Bibikulam, Madurai – 625 002 is *suo motu* impleaded as the second respondent in this proceeding.

8. The petitioner shall file an appeal before the second respondent within a period of 30 days from today on the rest of the issues. The second respondent shall thereafter proceed to pass an appropriate order on merits and in accordance with law. Needless to state, the petitioner shall deposit 10% of the balance amount on the duty confirmed in the impugned order while filing such appeal.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. In the result, this Writ Petition stands partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.07.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

1.The Assistant Commissioner of CGST & C. Excise,
Dindigul-II Division,
Dindigul.

2.The Commissioner of GST & Central Excise (Appeals),
Coimbatore at Madurai,
C.R.Building, Bibikulam,
Madurai – 625 002.

https://www.mhc.tn.gov.in/judis

WEB COPY

C.SARAVANAN, J.

JEN

W.P.(MD) No.5301 of 2023
and
W.M.P.(MD) No.4974 of 2023

29.07.2024