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W.P.(MD)No.11645 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

|               |            |
|---------------|------------|
| Reserved on   | 02.08.2024 |
| Pronounced on | 22.08.2024 |

CORAM :

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.(MD)No.11645 of 2024

and

W.M.P.(MD)No.10383 of 2024

M/s.South India Krishna Oil and Fats Private Limited,  
Represented by its Manager (Taxation)  
Mr.Vikas Rathor

... Petitioner

Vs.

The Assistant Commissioner of GST-Central  
Tax Central Excise,  
Thanjavur Division,  
Ponnagar, Medical College Road,  
Thanjavur – 613 007.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order No.01/2024-GST Refund dated 11.01.2024 on the file of the respondent and quash the same and direct the respondent to refund the balance interest claim of Rs.18,65,700/- as per the refund application.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mr.N.Dilip Kumar  
Senior Standing Counsel  
for Mr.K.Prabhu  
Junior Standing Counsel



W.P.(MD)No.11645 of 2024

## **ORDER**

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The petitioner has filed this writ petition against the impugned order dated **11.01.2024** whereby, the petitioner's refund claim for the tax paid on reverse charge basis on ocean freight for a sum of Rs.66,00,287/- together with interest at 6% (interest of Rs.1,94,211/-) from **17.07.2023** has been granted to the petitioner.

2. The refund claim itself came to be filed by the petitioner on **04.04.2023** after the Hon'ble Supreme Court rendered its decision in **Union of India Vs. Mohit Minerals**, (2022) 61 GSTL/257 (SC) dated **19.05.2022**. By the aforesaid decision, the Hon'ble Supreme Court has held as under:-

### **“(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***



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*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 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.*



W.P.(MD)No.11645 of 2024

*The specification of the recipient in this case the importer by 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.*

*149. For the reasons stated above, the appeals are accordingly dismissed.*

*150. Pending application(s) if any, stand disposed of."*

3. The specific case of the petitioner is that the petitioner has paid tax, which was not due to the Department and therefore, collection was contrary to Article 265 of the Constitution of India. Therefore, the petitioner is entitled for refund together with interest at 6% from the date of payment of tax to the Department.



W.P.(MD)No.11645 of 2024

4. Learned counsel for the petitioner has placed reliance on the decision of the Division Bench of this Court in **M/s.KTV Health Food Private Limited Vs. Union of India**, in W.P.Nos.10330 of 2020 etc., batch dated **29.09.2022**, 2022 (381) E.L.T. 66 and the decision of the Gujarat High Court in **Cosmol Energy Pvt. Ltd. Vs. State of Gujarat**, 2021 (55) GSTL 390 (Guj.)

5. Specifically, the learned counsel for the petitioner has placed reliance to Paragraph 6 of the second mentioned decision i.e., **Cosmol Energy Private Limited's case** (referred to supra), wherein it was observed that the revenue is obliged to refund the amount erroneously collected following the decision of the Hon'ble Supreme Court in **State of Madhya Pradesh Vs. Bhailal Bhai and others**, AIR 1964 SCC 1006.

6. Learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in **Union of India Vs. Tata Chemicals Limited**, (2014) 6 SCC 335. A specific reference was made to Paragraphs 31 and 37, wherein it was held as under:-

***“31. The Department has also issued Circular clarifying the purpose and object of introducing **Section 244A** of the Act to replace **Sections 214, 243 and 244** of the Act. It is clarified therein, that, since there was some lacunae in the earlier***



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*provisions with regard to non-payment of interest by the revenue to the assessee for the money remaining with the Government, the said section is introduced for payment of interest by the Department for delay in grant of refunds. A general right exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund carried with it the right to interest also. This is true in the case of assessee under the Act.*

32. ....

*37. A “tax refund” is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of **Section 244A**, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only*



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*without extending the similar benefit to a resident/ deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/ foreign company.”*

7. Learned counsel for the petitioner has also drawn attention to the decision of the Punjab & Haryana High Court in **Diwakar Enterprises Private Limited Vs. Commissioner of CGST**, (2023) 5 Centax 256 (P&H). A specific reference was made to Paragraphs 14 and 15, wherein it was held as under:-

*“14. In the present case, as per the Department, the petitioner has deposited the impugned amount voluntarily and the proper procedure has been followed. But Article 265 of the Constitution of India lays down that collection of tax has to be by the authority of law. If tax is collected without any authority of law, the same would amount to depriving a person of his property without any authority of law and would infringe his right under Article 300A of the Constitution of India as well. In the present case, no receipt was given by the Proper Officer after accepting the impugned amount. Thus, the amount deposited by the petitioner under protest were liable to be refunded in view of the above mentioned judgments, as the petitioner has been deprived of his right.*

*15. In view of the above, the writ petition is partly allowed and respondent No.1 is directed to refund a sum of Rs.1,99,90,000/- along with 6% interest.”*

8. Learned counsel for the petitioner has also placed reliance on the following decisions of the Division Bench of the Gujarat High Court:

- i. **Adi Enterprises Vs. Union of India**, 2022 (64) G.S.T.L. 392 (Guj.).



W.P.(MD)No.11645 of 2024

ii. **Louis Dreyfus Company India Private Limited Vs. Union of India,**

2022 (65) G.S.T.L. 261 (Guj.).

iii. **Panji Engineering Private Limited Vs. Union of India,** (2023) 9

Centax 419 (Guj.).

9. On the other hand, learned Senior Standing Counsel for the respondent would submit that the present writ petition is devoid of merits and is liable to be dismissed. It is submitted that the petitioner has an alternate remedy by way of appeal before the Appellate Authority under Section 107 of the Central Goods Services Tax (CGST) Act, 2017.

10. That apart, it is submitted that the Hon'ble Supreme Court gave its decision in **Mohit Mineral's case** (referred to supra) on **19.05.2022** and that the petitioner made a refund claim only on **04.04.2023** and that eventually the refund claim was also rejected by the respondent vide order dated **18.07.2023**. The rejection was challenged by the petitioner before this Court in W.P.(MD) No.19991 of 2023, which came to be allowed on **22.09.2023**.

11. It is submitted that after the order dated **22.09.2023** was passed, the refund claims were duly processed and the amounts were refunded to the



*W.P.(MD)No.11645 of 2024*

petitioner. Pursuant to the same, a sum of Rs.1,94,211/- together with interest at 6% per annum was calculated from the date of receipt of application i.e., from **18.05.2023** till the date of payment.

12. Learned Senior Standing Counsel for the respondent would further submit that the tax towards the ocean freight was paid by the petitioner on a reverse charge basis/mechanism. It is submitted that input tax was availed under Section 16 of the Integrated Goods and Services Tax (IGST) Act, 2017. It is further submitted that the credit would have been utilized by the petitioner for discharging the tax liability of the petitioner.

13. It is further submitted that the amount was received by the petitioner on **17.04.2023** and the proportionate credit was reversed by the petitioner only on **17.07.2023**. It is therefore submitted that the petitioner was not put to any loss except the petitioner was able to monetize the Input Tax Credit paid on reverse charge basis/mechanism that was availed by the petitioner.

14. It is further submitted that the petitioner itself is a registered private limited company under the respective GST Acts and is liable to pay tax and therefore, only the excess amount which could not be utilized can be ordered to



W.P.(MD)No.11645 of 2024

be refunded and that there is no one-to-one correlation between tax paid by the petitioner and the tax adjusted towards the tax liability.

15. It is further submitted that the refund interest is to be paid strictly under Sections 56 and 57 of the respective GST Acts and therefore, the petitioner cannot claim any interest on the tax which was paid by the petitioner in respect of which, the petitioner had claimed Input Tax Credit, which is lying unutilized and the amount was reversed only on **17.07.2023**. Hence, prays for dismissal of the writ petition.

16. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

17. The refund tax paid by the petitioner on reverse charge basis has been sanctioned by the respondent vide impugned Order-in-Original No.01/2024-GST Refund made in Form GST-RFD-06 dated **11.01.2024**. The refund of Input Tax Credit paid by the petitioner had primarily arisen on account of the decision of the Hon'ble Supreme Court in **Union of India Vs. Mohit Minerals**, (2022) 61 G.S.T.L. 257 (SC) dated **19.05.2022**. The conclusion in Paragraphs 148, 149 and 150 have been extracted above.



W.P.(MD)No.11645 of 2024

18. There is no dispute that the petitioner is a supplier within the meaning of Section 2(105) of the CGST Act and was liable to pay tax on the supplies effected by the petitioner. Therefore, although the petitioner shall not be held liable to pay tax on reverse charge basis pursuant to the decision of the Hon'ble Supreme Court in the above mentioned case, the refund together with interest ought to have been ordered subject to the petitioner proving that there was no unjust enrichment as was ordered by the Hon'ble Supreme Court in **Mohit Mineral's case** (referred to supra).

19. The fact remains that the Input Tax Credit that was availed by the assessee under the provisions of the respective GST Acts and the rules thereunder would entitle utilization of the Input Tax Credit for discharging the tax liability under the provisions of the respective GST Acts. This aspect ought to have been examined by the respondent before sanctioning the refund claim even though in the earlier round of litigation, by an order dated **22.09.2023** in W.P.(MD) No.19991 of 2023, this Court had directed the petitioner to refund claim and disburse the amount within a period of four weeks from the date of receipt of the order.



W.P.(MD)No.11645 of 2024

20. Merely because the tax was paid by the petitioner *ipso facto* would not entitle the petitioner to refund the amount paid as the issue was revenue neutral. The amount that was paid by the petitioner on ocean freight would have been availed as Input Tax Credit and utilized then and there. Therefore, in my view, the petitioner was as such, not entitled to refund claim much less interest. Be that as it may, I do not wish to disturb the rights which have accrued to the petitioner so far.

21. The prayer of the petitioner in this writ petition shows that the petitioner is avaricious and is greedy and taking undue advantage of the Court proceedings even though the petitioner unilaterally has not suffered any prejudice. Only, where IGST on ocean freight charges were paid on reverse charge basis/mechanism and were borne by the importer, who was not liable/who is no more liable to pay GST alone can be said to have been prejudiced. Under these circumstances, there is no case made out for granting any relief to the petitioner.

22. As such, I do not find any reasons to interfere with the impugned order dated **11.01.2024** passed by the respondent.



*W.P.(MD)No.11645 of 2024*

23. This Writ Petition is therefore liable to be dismissed and is accordingly dismissed. No costs. Connected Writ Miscellaneous Petition is closed.

**22.08.2024**

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

RR/arb

To

The Assistant Commissioner of GST-Central  
Tax Central Excise,  
Thanjavur Division,  
Ponnagar, Medical College Road,  
Thanjavur – 613 007.



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*W.P.(MD)No.11645 of 2024*

**C.SARAVANAN, J.**

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Pre-delivery order in  
W.P.(MD)No.11645 of 2024

22.08.2024