BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.10033 of 2024
and
W.M.P.(MD)No.9066 of 2024

M/s.Eveready Spinning Mills Private Limited,
Represented by its Joint Managing Director
S.Chandrakumar. ... Petitioner

Vs.

The Assistant Commissioner,
O/o. the Assistant Commissioner of Central GST & Central Excise,
Dindigul I Division,
Post Box No.47, D.No.68, Nehruji Nagar, R.M.Colony Road,
Dindigul – 624 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the respondent rejecting the refund of Rs.1,97,62,459/- in Order No.MAD-GST-000-ASC-07-2024-R in file No.C.No.IV/16/03/2024-Reg, dated 12.03.2024 and quash the same as arbitrary, contrary to law, and to direct the respondent to sanction the refund with interest to the petitioner.

For petitioner : Dr.M.S.Krishna Kumar

For respondent : Mr.R.Nandha Kumar
Senior Panel Counsel

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ORDER

Heard learned counsel for the petitioner and learned Senior Penal Counsel for the respondent.

2. The petitioner is a manufacturer of cotton yarn, blended cotton yarn, etc., The petitioner had filed refund claim in Application Reference No.AA330124003736P dated 02.01.2024 under Section 54 (3) of the respective GST enactments read with Rule 89(1) of the GST Rules, 2017.

3. Since the petitioner was under Inverted Duty Structure, the refund claim of the petitioner has been rejected by the respondent by placing reliance on para 3.2 of CBEC Circular No.135/05/2020-GST bearing reference CBEC-20/01/06/2019-GST. Para 3.2 of the above Circular reads as under:

> *"3.2 It may be noted that the refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is*

hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."

4. By the impugned order, the respondent has rejected the claim by the petitioner with the following observation:

> *"9. Further as per Circular No.135/05/2020 GST Dated the 31st March, 2020 in Para No.3.2 of 3 stipulated that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.*
>
> *10. Whereas it appeared that the tax payer are manufacturing of 100% Cotton yarn, the input raw cotton is used. The rate of tax on input raw cotton which is used in the production of 100% Cotton yarn is 5% IGST or 2.5% CGST and 2.5% SGST and whereas the rate of tax on output goods 100% Cotton yarn is also 5% IGST or 2.5% CGST and 2.5% SGST. Hence it appeared that the output goods 100% cotton yarn does not fall under the Category of inverted duty structure for the purpose of claiming refund. Hence, GST refund of Rs.1,97,62,459/- filed, under the category of "Inverted Duty Structure" for the month of November, 2023 is liable to be rejected.*

11. Taxpayer quoted only orders of High Court of other states in their written reply, not even mentioned a single order of High Court of Madras. Hence the matter is not come under the category of Res judicata. Accordingly, I pass the following order.

ORDER

I hereby reject the GST refund of Rs.1,97,62,459/- filed under the category of "Inverted Duty Structure" for the month of November, 2023, online through RFD- 01 vide ARN NO.AA330124003736P dated 02.01.2024 under Section 54 of Central Goods and Services Tax Act, 2017 read with Rule 89 of Central Goods and Services Tax Rules, 2017.”

5. The aforesaid Circular has already been struck down as ultravires of the provisions of the Act by the following Courts:

S.No	Name of the High Court	Reference
1.	Gauhati High Court	***BMG Informatics Pvt. Ltd vs. The Union of India and three others in W.P.(C)/3878/2021 dated 02.092021.***
2.	Culcutta High Court	***M/s.Shivaco Associates & Another vs. Joint Commissioner of State Tax in W.P.A.No.54 of 2022 dated 11.03.2022***
3.	Rajesthan High Court	***Baker Huges Asia Pacific Limited vs. Union of India and three others in D.B.Civil Writ Petition No. 5714/2021 dated 30.06.2022***
4.	Delhi High Court	***Indian Oil Corporation Limited vs. Commissioner of Central Goods and Services Tax and others in W.P.(C)No.10222/2023 and C.M.No.39561/2023 dated 05.12.2023***

6. Despite the same, the circular has been applied to the facts of the case to deny the benefit of the refund under Section 54(3) of the respective GST enactments to the petitioner. The decisions of the above mentioned High Courts, which have struck down the Circular as ultravires, have not been reversed so far.

7. The provisions of the GST enactments being applicable pan India, the Department cannot take a different stand and such stand would be contrary to the ratio of the Hon'ble Supreme Court in ***Kusum Ingot & Alloys Ltd vs. Union of India reported in 2006 (168) ELT.3 (SC).*** Therefore, the impugned order denying the benefit of the refund on account of the Inverted Duty Structure to the petitioner is unsustainable.

8. That apart, it is noticed that the following orders have also been issued to the petitioner for the refund application for the following period:

S.No.	Period	ARN Number/dated	Sanctioned refund amount Rs.
1.	July 2022 to Sep 2022	AA3305240308966/11.06.2024	58,56,099
2.	Dec 2023 to Jan 2024	AA3305240012800/14.06.2024	1,81,89,852

9. In view of the above orders, the respondent cannot take a contrary stand regarding the refund claim to the petitioner.

10. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order in the light of the above mentioned orders santioning for the refund to the petitioner. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

This Writ Petition is allowed with above directions. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2024

Index : Yes / No
Internet : Yes / No
apd

<u>C.SARAVANAN, J.</u>

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W.P.(MD) No.10033 of 2024

16.07.2024