BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.10951 of 2021

M/s.KOG-KTV Food Products (India) Pvt. Ltd.,
Rep. by its Managing Director
Mr.K.T.V.Narayanan,
48/310, Thambu Chetty Street,
Chennai 600 001. ... Petitioner

Vs.

1.Joint Commissioner (Appeals),
O/o. Commissioner of GST and
Central Excise (Appeals),
Coimbatore, Circuit Office,
No.4, Lal Bhadur Shashtri Marg,
C.R. Building, Madurai – 625 002.

2.The Assistant Commissioner of
CGST & Central Excise,
Tuticorin Division,
Madathur, Tuticorin – 628 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Order-in-Appeal No.MAD-CGST-JTC-APP-09 to 30/2021 dated 26.03.2021 passed by the first respondent and quashing the same and further directing the second respondent to grant refund of Rs.2,61,74,183/- for the period July 2017 to March 2019 along with applicable interest.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.R.Nandakumar
Senior Standing Counsel
assisted by Mr.S.Ragaventhree

ORDER

The petitioner has filed this Writ Petition challenging the impugned Order-in-Appeal No.MAD-CGST-JTC-APP-09 to 30/2021 dated 26.03.2021 passed by the first respondent and seeking directions to the second respondent to grant refund of Rs.2,61,74,183/- for the period starting from July, 2017 and ending with March, 2019 along with applicable interest to the petitioner.

2. The operative portion of the impugned order reads as under:

> ***m)*** *The three member bench of CEGAT, South Regional Bench, Madras comprising Mr. Justice U.L. Bhat, President, S/Shri S. Kalyanam, Vice President and Gowri Shanker, Member (T) in the case of Madura Coats Versus Collector of Central Excise, Bangalore [1996 (82) E.L.T. 512 (Tribunal)) has held that in regard to constitutionality of a provision the decision of a particular High Court should certainly be*

followed by all authorities within the territorial jurisdiction of that High Court. The Tribunal further held that the authorities in another State are of course not bound to follow the view taken by a particular High Court in the absence of a decision by the jurisdictional High Court in regard to constitutionality of a provision and if the High Court having jurisdiction over the authority and the assessee, has not struck down the provision or notification as ultra vires, the Tribunal has to follow the same since the jurisdictional High Court has not struck it down. The above decision of the Tribunal has also been relied on by the Larger Bench of the Tribunal in the case of Collector of Central Excise, Chandigarh Versus Kashmir Conductors (1997 (96) E.L.T. 257 (Tribunal)]. With due respect to decision of the Honourable High Court of Gujarat in the case of Mohit Minerals, I am inclined to decide the matter without relying on the decision in the case of Mohit Minerals as the jurisdictional High Court of Madras has not struck down the provisions of levy and collection of service tax on Ocean freight as ultra vires and in the Writ Petition filed by the appellant the Hon'ble High Court of Madras has not granted any stay. Moreover, the Hon'ble Apex Court has admitted an appeal filed by the department in SLP (C) No. 013958/2020 on 20.11.2021 against the judgment of the Hon'ble High Court of Gujarat in the case of M/s. Mohit Minerals P Ltd. reported in 2020-33-GSTL-321-(Guj).

***7.** In view of the foregoing, I pass the following order*

ORDER

The Appeals in A.No. 06 to 27/2020-GST are rejected and the Orders-in- Original No. 166 to 187/2019/FINAL/GST dated: 14.10.2019 are upheld.

3. The impugned order has been passed at the stage when the issue was pending before the Hon'ble Supreme Court against the decision of the Gujarat High Court in **Mohit Minerals (P) Ltd.** Vs. **Union of India**, (2020) 33 GSTL 321 (Guj). The Hon'ble Supreme Court has subsequently passed an order setting aside the said decision of the Gujarat High Court, on 19.05.2022 [**Union of India** Vs. **Mohit Minerals (P.) Ltd.**, (2022) 92 GST 101 (SC)]. The Hon'ble Supreme Court has held as under:

> *"148. (i) xxxx*
> *(ii) xxxx*
> *(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 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."*

4. This view has also been followed by a Division Bench of the Principal Bench of this Court in a batch of Writ Petitions in W.P.No. 10330 of 2019 etc. in the case of **M/s.KTV Health Food Pvt. Ltd.** Vs. **Union of India and others**, rendered on 29.09.2022.

5. In view of the above, the impugned Order-in-Appeal No.MAD-CGST-JTC-APP-09 to 30/2021 dated 26.03.2021 passed by the first respondent is set aside with consequential relief. The respondents are directed to process the claim of the petitioner for refund together with applicable interest under the provisions of the IGST Act, 2017, within a period of 3 months from the date of receipt of a copy of this order.

6. Accordingly, this Writ Petition stands allowed. No costs.

04.04.2024

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

JEN

Copy To:
1.Joint Commissioner (Appeals),
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2.The Assistant Commissioner of CGST & Central Excise,
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C.SARAVANAN, J.

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