IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8817 of 2021
and W.M.P.No.9355 of 2021

M/s.Sri Vijaya Durga Timbers,
Represented by its Proprietor,
1434/2, Nagappa Industrial Estate,
GNT Road, Puzhal, Chennai,
Thiruvallur – 600 066.

...Petitioner

Versus

1.Union of India,
Represented by Secretary,
Ministry of Finance,
Government of India, North Block,
New Delhi – 110 001.

2.Goods and Service Taxes Council,
5th Floor, Tower-II, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi – 110 001.

3.The Superintendent,
GST & Central Excise,
GST & Central Excise Audit – I Commissionerate,
Chennai – 600 101.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the third respondent in the Show Cause Notice No.57/2021 dated 24.02.2021 and quash the same as ultra vires to Integrated Goods and Services Tax Act, 2017 and Articles 19(1)(g) and Article 265 of the Constitution of India.

For Petitioner : Ms.C.Rekha Kumari

For Respondents : No Appearance

ORDER

In the present writ petition, the petitioner has challenged the Show Cause Notice No.57/2021 dated 24.02.2021 issued by the 3rd respondent herein against the petitioner.

2. The brief facts of the case are as follows:

The petitioner is a dealer importing timber from foreign countries. The petitioner has paid the Customs Duty as well as Integrated Goods and Services Tax (IGST) at the time of import of goods which included the Ocean Freight. The Ocean Freight was arranged and paid by the foreign exporter and the petitioner is not a party to this transaction.

3. While so, based on the Bill of Entry filed by the petitioner, the 3rd respondent has issued the impugned Show Cause Notice to the petitioner, wherein, it is proposed to levy IGST on RCM basis on the estimated value of Ocean Freight. Aggrieved over the same, the petitioner has knocked the doors of this Court with the present writ petition.

4. The learned counsel for the petitioner submitted that the petitioner cannot be treated as an 'importer of service' viz., Ocean Freight as defined under Section 2(11) of the Integrated Goods and Services Tax Act, 2017. It is further submitted that the issue involved herein is no longer *res integra* and is covered by the decision of the Gujarat High Court in ***Mohit Minerals Pvt. Ltd. Vs. Union of India & Ors.*** *(2020) 33 GSTL 321 (Guj.).*

5. None appeared on behalf of the respondents.

6. At this juncture, it is pertinent to state that the issue involved in the present case is not only covered by the decision of the Gujarat High Court (referred *supra*), but, also by the subsequent decision of the Hon'ble

Supreme Court in ***Union of India & Anr. Vs. Mohit Minerals Pvt. Ltd.*** *(2022) 10 SCC 700.*

7. In fact, following the decision of the Hon'ble Supreme Court (referred *supra*), a Division Bench of this Court has allowed a batch of writ petitions vide order dated 29.09.2022 in W.P.Nos.10330 of 2019 & etc. Similarly, when this Court dealt with an identical issue in M/s.Shri Narayan Corporation Vs. Union of India & Ors. in W.P.(MD).No.19544 of 2021 vide order dated 15.04.2024, has taken note of the decision rendered by the Hon'ble Supreme Court (referred *supra*).

8. In view of the above, this Court directs the petitioner to submit its reply to the Show Cause Notice No.57/2021 dated 24.02.2021 issued by the 3rd respondent along with a copy of the decision rendered by the Hon'ble Supreme Court in ***Union of India & Anr. Vs. Mohit Minerals Pvt. Ltd.*** *(2022) 10 SCC 700* and also, along with copies of the aforesaid orders passed by this Court.

9. On filing of reply by the petitioner, the 3rd respondent shall consider the same in the light of decision rendered by the Hon'ble Supreme Court in the case (referred *supra*) and pass final orders, within a period of six months from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner.

10. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

21.01.2025

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Secretary,
Ministry of Finance,
Government of India, North Block,
New Delhi – 110 001.

2.Goods and Service Taxes Council,
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C.SARAVANAN, J.

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