IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/2/2025

C O R A M

THE HONOURABLE Mr.JUSTICE **KRISHNAN RAMASAMY**

Writ Petition No.39022 of 2024
a n d
W.M.P.Nos.42266 and 42267 of 2024

M/s. Fairmacs Shipstores Private Limited
rep. By its Director - Mr.K.Vivekanand
No.31 Moore Street
Chennai. ... Petitioner

Vs

1. The Deputy Commissioner (ST)
   GST Appeal
   Room No.210, II Floor,
   Greams Road,
   Chennai.

2. The Deputy Commercial Tax Officer
   Harbour: North I: Chennai North
   Tamil Nadu. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the second respondent bearing Reference No.ZD3309230821621 dated 14/9/2023 and quash the same.

For petitioner ... Ms.S.Gayathri

For respondents ... Ms.Amirthapoonkodi Dinakaran
Government Advocate
(Tax)

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O R D E R

This writ petition has been filed to quash the order dated 14/9/2023 passed by the second respondent in ZD3309230821621.

2. The brief facts that are necessary for the disposal of this writ petition are as follows:-

On 17/6/2023, petitioner had received ASMT – 10 notice and replied to the same on 20/6/2023 in ASMT 11. The petitioner had admitted the credit and reversed the same and states that he has not utilised the credit. On 20/7/2023, DRC-01A notice was issued to the petitioner and on 2/8/2023 show cause notice in DRC-01 was issued to the petitioner and the petitioner had replied to the show cause notice on 30/8/2023. But, on 14/9/2023, the second respondent had passed the impugned order, directing the petitioner to pay interest of Rs.33,320/- and penalty of Rs.3,86,094/- totalling to Rs.4,19,414/-. Being aggrieved, the petitioner had filed this instant writ petition.

3. Heard Ms.S.Gayathri, learned counsel for the petitioner and Ms.Amirthapoonkodi Dinakaran, learned Government Advocate (Tax) for the respondents.

4. The learned counsel appearing for the petitioner would submit that the staff of the petitioner who was handling GST, missed to check and inform the higher officials about the passing of the impugned order. Hence, there was a delay of 94 days in filing the appeal. She would further submit that on 25/10/202/4, appeal was summarily rejected, without giving any opportunity of hearing to the petitioner on the ground that there was a delay.

5. She would further submit that once input tax was reversed and the balance remain unutilised from the date of claim of Input Tax Credit in Electronic Credit Ledger, at no point of time, Input Tax Credit was either availed or utilized and therefore, penalty and interest cannot be imposed.

6. To substantiate her case, she had produced a copy of the order dated 11/6/2024, passed in W.P.(MD) No.26254 of 2022 by a learned Single Judge of this Court, wherein it is held that once the ITC was neither availed nor utilised by the petitioner, question of imposing the penalty does not arise.

7. Defending the impugned order, the learned Government Advocate (Tax) appearing for the respondents would submit that impugned order of the second respondent is well reasoned and do not require any interference.

8. Perused the materials available on record.

9. Relevant paragraph of the order dated 11/6/2024 made in W.P.(MD) No.26254 of 2022 is extracted hereunder:-

> "I am of the view that imposition of penalty under the peculiar facts and circumstances of the case is unjustified. However, considering the fact that the petitioner has availed input tax credit, which was not eligible to be availed, but could have resulted in wrong utilization of input tax credit, a token penalty of Rs.10,000/- is imposed on the petitioner. The observation of the first respondent by placing reliance on the decisions of the Hon'ble Supreme Court, referred to supra, is also not

relevant as Section 74 of the CGST Act deals with a situation where the credit is availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.

10. Similar view was also taken by this Court in ***KUMARAN FILAMENTS (P) LTD Vs. COMMISSIONER OF CENTRAL GST AND CENTRAL EXCISE, MADURAI AND OTHERS (2021 SCC ONLINE MAD 12062)*** and also by the Division Bench of the Patna High Court in ***COMMERCIAL STEEL ENGINEERING CORPORATION Vs. STATE OF BIHAR AND OTHERS (2020) 74 GSTR 51: 2019 SCC ONLINE PAT 3363.*** In such a view of the matter, this Court is inclined to set aside the order impugned in this writ petition, in the light of the order passed by this Court in W.P.(MD) No.26254 of 2022.

11. Accordingly, this writ petition is disposed of and the impugned order dated 14/9/2023 passed in ZD3309230821621 is set aside and the matter is remitted back to the second respondent to consider the matter afresh, and pass appropriate orders on merits and in accordance with law, after affording

KRISHNAN RAMASAMY,J

mvs.

an opportunity of hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

12/2/2025

mvs.

Index: yes/No
Neutral Citation: Yes/No

To

1. The Assistant Commissioner of Income Tax
   Non-Corporate Circle – 3
   Chennai.

2. The Commissioner of Income Tax (Appeals) 4
   II Floor, Main Building
   Income Tax Office
   Chennai 600 034.

3. The Deputy Commissioner of Income Tax
   Non-Corporate Circle 3
   Chennai 34.

W.P.No.39022 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 39022 of 2024
AND
WMP Nos. 42267 OF 2024 and 42266 OF 2024

M/s FAIRMACS SHIPSTORES
PRIVATE LIMITED
Represented by its Director Mr. K.
Vivekanand NO.31, MOORE STREET,
CHENNAI, Chennai, Tamil Nadu,
600001.

Petitioner(s)

Vs

The Deputy Commissioner (st)
Gst Appeal Chennai-i Greams Road,
2nd Floor, Room No.210, Chennai.

Respondent(s)

For Petitioner(s): Ms.Gayathri S

For Respondent(s): Ms.Amirtapoonkodidinakaran,
Government Advocate (t)

ORDER

This matter has been listed today under the caption 'For Being Mentioned' at the instance of the learned counsel for the petitioner.

2. The learned counsel for the petitioner submitted that in the order dated 12.02.2025, inadvertently '***To address***' portion of the respondents were wrongly typed.

3. In view of the same, Registry is directed to correct the same as follows:

To

1. The Deputy Commissioner (ST)
GST Appeal
Room No.210, II Floor,
Greams Road, Chennai.

2. The Deputy Commercial Tax Officer
Harbour: North I: Chennai North
Tamil Nadu.

4.Except the aforesaid correction, the order dated 12.02.2025 remains unaltered. After carrying out the aforesaid corrections, Registry is directed to issue fresh order copy to the parties concerned.

04-04-2025

arr

To

1.The Deputy Commissioner (st)
Gst Appeal Chennai-i Greams Road,
2nd Floor, Room No.210, Chennai.

2.The Deputy Commercial Tax Officer
HARBOUR North-I CHENNAI
NORTH Tamil Nadu

KRISHNAN RAMASAMY J.

arr

**WP No. 39022 of 2024
AND WMP NOS. 42267
OF 2024,WMP NO.
42266 OF 2024**

04.04.2025