IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.305, 311 & 314 of 2025
and
W.M.P. Nos.349, 350, 355, 357, 359 and 360 of 2024

M/s.DSM Soft Private Limited
(Represented by its Managing Director
Mr.Ganesh Ananthakrishnan)
11, Anu Arcade, 15th Cross Street,
Shastri Nagar, Chennai
Tamil Nadu – 600 020. ...Petitioner in all WPs

Vs

1. The Additional Commissioner of GST (Appeal-II)
Newry Towers, 2nd Floor
No.2054/I, II Avenue, 12th Main Road
Anna Nagar, Chennai-600 040.

2. The Assistant Commissioner of GST & Central Excise
Adyar Division, Chennai South Commissionerate
3rd Floor, No.692, M.H.U.Complex
Nandanam, Chennai-600 035. ... Respondents in W.P.No.305 of 2025

1. The Assistant Commissioner of GST & Central Excise
Adyar Division, Chennai South Commissionerate
3rd Floor, No.692, M.H.U.Complex
Nandanam, Chennai-600 035.

2. The Additional Commissioner of GST (Appeal-II)
Newry Towers, 2nd Floor
No.2054/I, II Avenue, 12th Main Road
Anna Nagar, Chennai-600 040. ... Respondents
in W.P.Nos.311 & 314 of 2025

Writ Petition No.305 of 2025 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in passing the impugned order in Appeal No.262/2024 dated 23.09.2024 for the period July, 2017 to March 2020 and quash the same as it rejects the Appeal filed by the petitioner, even though the Appeal was taken on record, duly numbered and heard on merits as such a rejection is completely arbitrary and unreasonable and in violation of principles of natural justice.

Writ Petition No.311 of 2025 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in passing the impugned order reference No.ZD3310241161592Q in form RFD-06 dated 22.10.2024 for the period July 2024 and quash the same to the extent of appropriation of refund sanctioned vide the said demand against non-existent dues, thereby directing him to refund to the petitioner the amounts appropriated as it is arbitrary, unreasonable and illegal and in violation of principles of natural justice.

Writ Petition No.314 of 2025 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in passing the impugned order reference No.ZD3310241613601 in form RFD-06 dated 22.10.2024 for the period June 2024 and quash the same to the extent of appropriation of refund sanctioned vide the said demand against non-existent dues, thereby directing him to refund to the petitioner the amounts appropriated as it is arbitrary, unreasonable and illegal and in violation of principles of natural justice.

For Petitioner in all WPs	:	Mrs.Sharanya Vijay .K for Mr.K.Vaitheeswaran
For Respondents in all WPs	:	Mr.Rajendran Raghavan Senior Standing Counsel for R1 and R2

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C O M M O N O R D E R

There are three writ petitions filed :-

(a) W.P.No.305 of 2025 is filed challenging the order of the first respondent dated 23.09.2024 whereby an appeal filed by the petitioner against the order dated 08.01.2023 was rejected on the premise that the petitioner has not complied with the mandatory pre-deposit mandated in terms of sub-section (6) of Section 107 of the Central Goods and

Services Tax Act, 2017 {CGST Act}.

(b) Writ Petition No.311 of 2025 is filed challenging the impugned order reference No.ZD331024161592Q in form RFD-06 dated 22.10.2024 for the period July 2024 and quash the same to the extent of appropriation of refund sanctioned vide the said demand against non-existent dues, thereby directing him to refund to the petitioner the amounts appropriated.

(c) Writ Petition No.314 of 2025 is filed challenging the impugned order reference No.ZD3310241613601 in form RFD-06 dated 22.10.2024 for the period June 2024 and quash the same to the extent of appropriation of refund sanctioned vide the said demand against non-existent dues, thereby directing him to refund to the petitioner the amounts appropriated.

2. It is submitted that the order-in-original was passed on 18.01.2023 and the petitioner filed an appeal on 13.04.2023 i.e., within 90 days prescribed for filing an appeal in terms of Section 107 of CGST Act. The petitioner had also credited 10% of disputed tax in cash credit ledger towards pre-deposit as mandated in Section 107 of CGST Act.

However, the petitioner did not follow up generating challan in DRC-03. It may be relevant to note that the credit in the electronic cash ledger was made on 13.04.2023 without generating challan. It is submitted that the appeal was filed manually as order-in-original was served on the petitioner physically and not on-line. It is submitted that had the Appellate Authority notified the petitioner about the default in non-generation of DRC-03 within the stipulated time, the petitioner could have generated the DRC-03. It is submitted that failure to generate the DRC-03 is only a technical violation or breach and that the substantive requirement of crediting cash credit ledger towards the payment of pre-deposit was made within the time stipulated for filing of appeal.

3. This Court finds merit in the submission of the learned counsel for the petitioner inasmuch as the condition of payment of 10% of disputed tax as pre-deposit was complied with in terms of Section 107 of the Act, though DRC-03 may not have been generated within the stipulated period. The infraction/ non-compliance if any is only technical. In view thereof, the Appeal shall be taken on record duly numbered and heard on merits.

4. In the meanwhile, it is submitted that pursuant to the rejection of the appeal, refunds which were due have been appropriated towards tax demands vide impugned order in original dated 18.01.2023.

5. It is submitted by the learned counsel for the petitioner that once this Court finds that crediting of cash ledger to the extent of 10% would result in compliance with the statutory condition of pre-deposit in terms of Section 107 of the Act. Any recovery thereafter would be barred in view of the embargo contained in sub-section (7) to Section 107 of the Act.

6. The learned counsel for the Respondents would submit that the petitioner may not be right in seeking any refund now.

7. At this stage, the learned counsel for the petitioner seeks liberty of the Court to file a representation seeking refund of the erroneous appropriation of the refund due in terms of Section 107 of the Act.

8. In view thereof, the petitioner is granted liberty to submit a

representation to the Respondents. If any such representation is filed, the Respondents shall pass orders on merits and in accordance with law within a period of 4 weeks from the date of receipt of a copy of this order after affording a reasonable opportunity of hearing.

9. Accordingly, these Writ Petitions stand disposed of and the impugned orders are set aside. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

08.01.2025

Index:Yes / No
Non-speaking order / speaking order
Neutral Citation : Yes/ No
mk / mka

To

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MOHAMMED SHAFFIQ, J.

mk/mka

W.P.Nos.305, 311 & 314 of 2025

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