Case Citation: (2024) ibclaw.in 1623 HC

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.21581 of 2022
&
W.M.P.(MD).Nos.15726 and 15727 of 2022

M/s. KOG-KTV Food Products (India) Pvt Ltd
rep by its Managing Director
Mr.K.T.V.Narayanan
C-85,C-68,C-88,
2nd main road
SIPCOT Industrial Complex
Madathur Road,
Tuticorin-628 008 ... Petitioner

Vs.

1.The Joint Commissioner (Appeals) Coimbatore
Circuit Office, Madurai
No.4, Lal Bahadur Shashtri Marg
C.R.Buildings,MAdurai-625 002

2.The Assistant Commissioner of CGST & Central Excise
SIPCOT Industrial Complex
Madahur road
Tuticorin-628 008 ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus call for the records pertaining to the impugned order - in - Appeal No.MAD-CGST-ADC-

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APP-077-2022 dated 10.08.2022 passed by the 1st respondent and quash the same and further direct the 1st respondent to accept the payment of pre-deposit made through debit from the Electronic Ciredit Ledger as pre-deposit for the purposes of Section 107(6) of the CGST Act 2017 and to hear the Appeal No.16/2022-GST filed by the petitioner on merits and pass such further or other orders.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.N.Dilipkumar, Standing Counsel

O R D E R

Petitioner is aggrieved by the impugned order in Appeal No.MAD-CGST-ADC-APP-077 dated 10.08.2022 passed by the 1st respondent. By the impugned order the 1st respondent has rejected the appeal filed by the petitioner on 03.03.2022 online against Order-in-Original No.1 of 2021-GST dated 31.12.2021.

2. The case of the petitioner is that petitioner need not pre deposit any amount as the input credit which was sought to be blocked by the department on 11.03.2020. It is noticed that the entire issue pertains to ITC demand which according to the respondent was not deposited by the petitioner.

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3. Although the petitioner would rely on the decision of this Court rendered in W.P.Nos.24577 and 24579 of 2023 vide order dated 21.08.2023 in the ***M/s. Larsen & Toubro Ltd Vs. The Joint Commissioner(ST)*** to state that the petitioner is not required to pre-deposit any amount disputed. In the present case, dispute pertains to denial of input tax credit. Therefore, the petitioner cannot deposit any amount from its electronic credit ledger. The petitioner has to pre deposit 10% of the disputed amount from its electronic cash ledger. There cannot be a pre deposit of the amount as is contemplated U/s. 107 of GST Act, 2017 from the petitioner's electronic credit ledger.

4. Under these circumstance Writ Petition is liable to be dismissed. However, liberty is given to the petitioner to deposit the amount U/s. 105 of the disputed amount through cash or through its electronic credit ledger within a period of 30 days from the date of receipt of a copy of this order. Subject to such compliance, the impugned order will stand quashed and the appeal shall stand restored to the file of the 1st respondent, who shall pass order on merits and in accordance with law within a period of six weeks. Needless to state that the petitioner shall be heard.

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5. Writ petition stands dismissed with the above liberty. No costs. Consequently, connected miscellaneous petitions are closed.

17.04.2024.

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

To
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C.SARAVANAN, J.

kpr/smn2

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17.04.2024

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