



W.P(MD)No.19314 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.08.2024

CORAM

**THE HONOURABLE MR JUSTICE MOHAMMED
SHAFFIQ**

**W.P(MD)No.19314 of 2024
and
W.M.P(MD)Nos.16380 and 16382 of 2024**

Viterra India Pvt Ltd.,
Having its Office at
41, Toovipuram,
First Street, Thoothukudi,
Tamil Nadu 628 002.

... Petitioner

Vs.

1.1.The Union of India,
through the Secretary,
Ministry of Commerce Department
of Commerce,
Udyog Bhavan, North Block,
New Delhi-110 001.

2.The Commissioner of GST and Central
Excise (Appeals)
Having his office at
Circuit Office, Madurai
No.4, Lal Bahadur Shastri Marg.
Central Revenue Buildings,



W.P(MD)No.19314 of 2024

WEB COPY Madurai-625 002.

3. The Joint Commissioner of GST and Central Excise (Appeals)
Having his Office at
Circuit Office, Madurai
No.4, Lal Bahadur Shastri Marg,
Central Revenue Buildings,
Madurai-625 002.
4. The Commissioner of CGST & CE., Tuticorin,
Circuit Office, Madurai,
No.4, Lal Bahadur Shastri Marg,
Central Revenue Buildings,
Madurai-625 002.
5. The Assistant Commissioner of CGST & CE,
Tuticorin Circuit Office, Madurai,
No.4, Lal Bahadur Shastri Marg,
Central Revenue Buildings,
Madurai-625 002.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in appeal dated 03.12.2021 and rectification order dated 28.06.2022 rejecting the appeal order passed by the respondent Nos.2 and 3 respectively and quash the same and direct the respondents to forthwith sanction and grant the refund of Rs.13,147/- along with appropriate interest for the month of July 2019.



W.P(MD)No.19314 of 2024

WEB COPY

For Petitioner : M/s.Jas Sanghavi
For R1 : Mr.R.Senthil Kumar
For R2 to R5 : Mr.R.Nandhakumar

ORDER

This Writ Petition is filed to quash the order in appeal dated 03.12.2021 and rectification order dated 28.06.2022 passed by the respondent Nos.2 and 3 respectively and direct the respondents to forthwith sanction and grant the refund of Rs.13,147/- along with appropriate interest for the month of July 2019.

2. It is submitted by the learned counsel for the petitioner as well as the learned counsel for the respondents that the issue stands covered by the judgment of the Hon'ble Supreme Court in **2022(61)GSTL 257 (SC)** confirming the judgment of Gujarat High Court, wherein it was held that the levy of GST on Ocean Freight Services vide notification 8/2017-IT(Rate), dated 28.07.2017 and the Entry of the Notification No.10 of 2017-IT(Rate), dated



W.P(MD)No.19314 of 2024

WEB COPY

28.06.2017 was struck down. The relevant portion of the judgment is extracted hereunder:

“3.The issue raised in this Writ petition was already allowed in favour of the assessee by the Hon'ble Gujarat High Court in the case of Mohit Minerals V. Union of India, reported in [2020 (33) GSTL 321 (Guj.) whereby the Notification 8/2017-IT(Rate) dated, 28.07.2017 and the Entry of the Notification No.10 of 2017-IT(Rate), dated 28.06.2017 was struck down. Subsequently the Department preferred SLP before the Hon'ble Supreme Court, whereby the Civil Appeal was dismissed vide order dated 19.05.2022 reported in 2022 (61) GSTL 257 (SC) confirming the judgment of Gujarat High Court holding that the levy of GST on Ocean Freight Services vide the notification stated supra is ultra vires section 8 of the CGST Act as well as section 5(3) of the IGST Act and accordingly no GST is leviable on such service.

4. Based on the aforesaid judgment, the petitioner had filed rectification application dated 30.05.2022 under section 161 of CGST to rectify the Order-in-Original dated 03.12.2012, but the



W.P(MD)No.19314 of 2024

WEB COPY

respondents rejected the application vide order dated 28.06.2022, stating that the petitioner is having remedy before the Goods and Service Tax Appellate Tribunal. However the Tribunal has not been constituted and thus the Tribunal is not in existence. Hence the petitioner had filed the present writ petition.

5. It is an admitted fact that the issue of levy of GST on Ocean Freight Services is settled by the Hon'ble Supreme Court and the Notification 8/2017-IT(Rate) dated, 28.07.2017 and the Entry of the Notification No.10 of 2017-IT(Rate), dated 28.06.2017 is struck down as ultra vires. In such circumstances the respondents are not empowered to collect GST for the Ocean Freight Services and consequently the respondents are bound to refund the amount collected.

6. Therefore, the respondents are liable to refund an amount of Rs.45,93,793/- and the respondents are directed to refund the same. As far as the interest portion is concerned, this Court is leaving open to the parties to adjudicate the same.”

3. In view thereof, the Writ Petition is disposed of on the



W.P(MD)No.19314 of 2024

WEB COPY

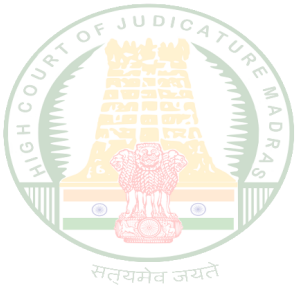
above terms. No costs. Consequently, connected miscellaneous petitions are closed.

14.08.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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- 2.The Commissioner of GST and Central
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W.P(MD)No.19314 of 2024

WEB COPY

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MOHAMMED SHAFFIQ, J.



WEB COPY



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