

W.P.Nos.960, 964, 968 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

**W.P.Nos.960, 964 and 968 of 2024**  
**and W.M.P.Nos.1013, 1008, 1005 of 2024**

M/s.VSM Weavess India Private Limited  
Represented by its Director,  
Mr.M.Ravichandran,  
SF No.334 Sankari Main Road, E.Kattur, Elanthakuttai  
(PO), Near Pallipalayam, Namakkal T.N. 638 008.

... Petitioner in all WP's

-VS-

The Assistant Commissioner (ST),  
Pallipalayam Assessment Circle,  
Tiruchengode.

... Respondent in all WP's

**PRAYER in W.P.No.960 of 2024:** Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned Deficiency Memo dated 11.10.2023 in reference Number

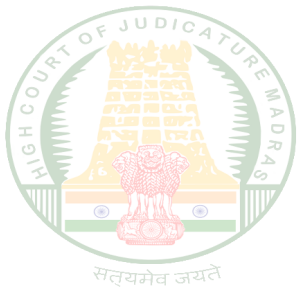


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ZD331023056849B issued by Respondent and quash the same and to consequently direct the respondent to sanction the refund claim dated 07.10.2023.

**PRAYER in W.P.No.964 of 2024:** Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned Deficiency Memo dated 09.10.2023 in reference Number ZD331023038138U issued by Respondent and quash the same and to consequently direct the respondent to sanction the refund claim dated 07.10.2023.

**PRAYER in W.P.No.968 of 2024:** Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned Deficiency Memo dated 09.10.2023 in reference Number ZD331023038177S issued by Respondent and quash the same and to consequently direct the respondent to sanction the refund claim dated 08.10.2023.



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For Petitioner : Mr.M.N.Bharathi  
in all WP's

For Respondent : Mr.TNC.Kaushik, AGP (Tax)  
in all WP's

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### **COMMON ORDER**

In these three writ petitions, which pertain to different and distinct assessment periods, the common petitioner assails three separate deficiency memos issued by the respondent.

2. The petitioner states that it is a textile manufacturing company, which uses viscose yarn as a raw material for the manufacturer of viscose fabrics. Since the tax paid on viscose yarn exceeds the tax payable on supplies by the petitioner, the petitioner asserts that there is unutilized Input Tax Credit (ITC) as a result of the inverted duty structure. By way of explanation, the petitioner points out that the raw material is taxed at 12%, whereas the final



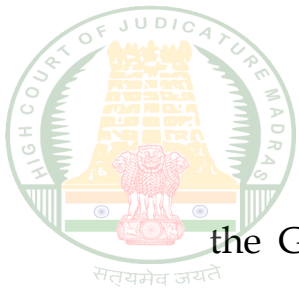
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product is taxed at 5%.

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3. In addition to the above, the petitioner states that it undertook export sales and that it is entitled to refund of IGST since such sales are zero rated. Earlier, the petitioner applied for and received refund as regards IGST. When the petitioner applied for refund with regard to unutilized ITC arising from the inverted duty structure, the application was rejected by the impugned deficiency memos. The present writ petitions were filed in the said facts and circumstances.

4. Learned counsel for the petitioner invited my attention to the impugned deficiency memos and pointed out that two reasons are specified therein. As regards the first reason, she submits that refund was claimed and received only in respect of export sales. She contends that the receipt of refund in respect of zero rated exports does not disentitle the petitioner to claim refund under Section 54 of



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the GST Act in respect of unutilized ITC. As regards the second reason mentioned therein, she submits that debit entries for the claims could not be made until authorization in such regard was given to the petitioner. She also points out that all supporting documents were made available and that the rejection is untenable.

5. Mr.TNC.Kaushik, Additional Government Pleader, accepts notice on behalf of the respondent. He submits that the deficiency memos expressly record that the tax payer may file a fresh refund application after rectifying the deficiencies indicated in the deficiency memos. Therefore, learned counsel submits that no interference is called for with the impugned order.

6. The deficiency memos record three reasons for rejecting the refund claim for the relevant period. Turning to the first reason, from the averments in the affidavit and the contentions of learned counsel, it is evident that the refund claimed and received earlier



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pertained to zero rated supplies and not unutilized ITC. Under Section 54 of the GST Act, refund may be claimed either for unutilized ITC on account of an inverted duty structure or in respect of zero rated exports. Therefore, the refund claim for zero rated exports does not disentitle the petitioner from claiming a refund for unutilized ITC. Consequently, the first reason for rejection is untenable. As regards the second reason that debit entries of the refund claim were not made, learned counsel submitted that such debit entries are ordinarily made only upon oral instructions from the authorities. Even otherwise, when the statute provides for a refund subject to fulfillment of conditions, as long as such conditions are fulfilled, a refund claim cannot be rejected on the ground that debit entries were not made.

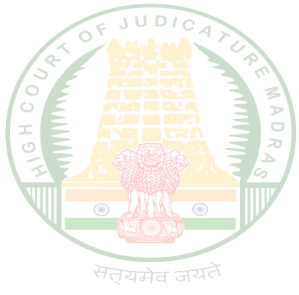
7. The last reason mentioned in the deficiency memos related to non submission of supporting documents. In paragraph 10 of the affidavit, the petitioner has set out the supporting documents that



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were taken into account by the refund processing officer. It is possible that ITC may accumulate both in respect of input goods that are not affected by an inverted duty structure and by the purchase of input goods that are so affected. Therefore, it is necessary for the petitioner to submit all necessary documents to establish that its claim for refund is confined to input goods that are affected by an inverted duty structure.

8. For reasons set out above, the impugned deficiency memos are quashed. As a corollary, the matter is remanded for re-consideration. It is open to the petitioner to submit any further supporting documents in respect of its refund claim within *two weeks* from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to take such documents into account, provide a reasonable opportunity to the petitioner and dispose of the refund applications by a reasoned order in accordance with applicable law within *four weeks* therefrom.



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9. W.P.Nos.960, 964 and 968 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.1013, 1008, 1005 of 2024 are closed.

**18.01.2024**

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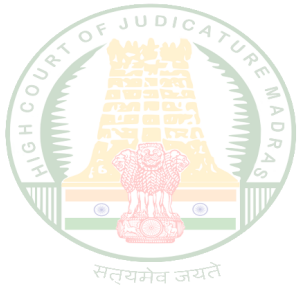
Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

**To**

The Assistant Commissioner (ST),  
Pallipalayam Assessment Circle,  
Tiruchengode.



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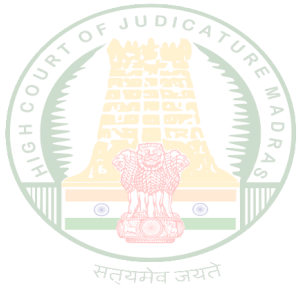


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**SENTHILKUMAR RAMAMOORTHY,J**

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