



*W.P.(MD) No.17876 of 2024*

**WEB COPY** BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 31.07.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) No.17876 of 2024  
and  
W.M.P.(MD) Nos.15336 and 15337 of 2024**

M/S.Srinivasa Marbles

... Petitioner

/vs./

1.The Assistant Commissioner (ST) (FAC),  
Madurai Rural (East) Assessment Circle,  
Commercial Tax Buildings,  
Madurai 625 020.

2.The Superintendent of GST & Central Excise,  
Madurai North Range,  
C.R.Buildings,  
Madurai.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for records in assessment orders issued by the 1<sup>st</sup> respondent in GST-DRC-07 GSTIN 33AASFS8669P1ZX dated 28.02.2023 and quash the same as illegal arbitrary without jurisdiction and in violation of the Principles of natural justice.



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For Petitioner : Mr.S.Karunakar

For R1 : Mr.R.Suresh Kumar  
Additional Government Pleader

### **ORDER**

The petitioner is aggrieved by the impugned order dated 28.02.2023 passed by the first respondent. By the impugned order, the first respondent has ordered as follows:

*“The claim of input tax credit of state tax of Rs.32,85,602/- and Rs.32,59,565/- central tax of rs.32,61,366/- in the new Tran -1 filed by the taxpayer is denied wholly.”*

2.The dispute has arisen on account of the alleged transitioning of ineligible input tax credit by the petitioner after the introduction of the respective GST enactment. The impugned order records as follows:-

2.1 The Taxpayer have filed New TRAK-1 application dated: 01-12-2022 for availment of Transitional Credit in light of the order dated: 22-July-2022 & 02-Sep-2022 of the Hon'ble Supreme Court in SLP (C) No. 32709-32710/2019 in the case of Union of India Vs Flip Trade Centre Pvt Ltd.

2.2 The above New Tran-1 application of the taxpayer was taken up for verification in terms of Circular No. 182/14/2022-GST dated: 10-Nov-2022 and 180/12/2022 GST dated: 09-Sep-2022 of the CBIC and as the Taxpayer was claiming the components of STATE Tax and Central Tax in their new TRAK-1 application as above, verification report and authenticity to this effect in Annexure-.. was requested from the nodal officer of the Central authorities.



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2.3 In response to which, the Superintendent of GST & Central Excise Madurai North Range, Madurai in the verification report in Annexure-II dated 23-February-2023 has stated that there is **Inadmissible Amount** of ITC admissible in respect of the Taxpayer.

2.4 The NEW TRAN-1 application dated under Table S(c) of TRAN-1 under tax credit carried forward to electronic credit ledger as STATE TAX, however on perusal of the copies of the invoices produced by the taxpayer as called for, The invoice copies are verified and Mismatch found in Annexure 1. On verification of the dealers return Carried forward Input Tax Credit is NIL in June 2017 VAT Monthly return.

In view thereof, the following order is passed in terms of Para 5.3.8 of the Circular dated 10 Nov 2022.

3.The case of the petitioner is that in respect of the very same dispute, the first respondent has already passed an order on 22.12.2023, wherein the following orders have been passed insofar as the denial of input tax credit, which was transitioned by the petitioner.

*For the reasons stated above, the reply filed by the taxpayer is not accepted. Hence they are hereby ordered to pay CGST Rs.1642801/- and SGST Rs. 1642801/- along with the interest and penalty under Section 50,74 of GST acts 2017 as detailed below:*

**ABSTRACT**

<b>DESCRIPTION</b>	<b>CGST (Rs.)</b>	<b>SGST (Rs.)</b>
<b>ITC TO BE PAID</b>	<b>1642801</b>	<b>1642801</b>
<b>INTEREST</b>	<b>2332933</b>	<b>2332933</b>
<b>PENALTY</b>	<b>1642801</b>	<b>1642801</b>
<b>TOTAL</b>	<b>5618535</b>	<b>5618535</b>



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4.It is submitted that the impugned order is at serial No.4 to the aforesaid order dated 22.12.2023. It is submitted that as against the order dated 22.12.2023, the petitioner is in appeal before the Appellate Authority under Section 107 of the GST Act. The said appeal was filed on 20.03.2024 along with pre-deposit of Rs. 3,28,562/-.

5.It is submitted that the appeal is pending final disposal by the Appellate Authority. However, on 10.07.2024, the respondents have recovered a sum of Rs. 1,97,331/- purportedly in pursuance of the impugned order dated 28.02.2023, content of which has been extracted above.

6.The learned Additional Government Pleader for the first respondent would submit that the impugned order is independently an appellable order in terms of Section 107 of the GST Act, 2017. It is further submitted that the impugned order is in response to the fresh application in TRAN 1 filed by the petitioner on 01.12.2022, pursuant to the directions of the Hon'ble Supreme Court in SLP(C) No.32709-32710 of 2018.



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7.It is submitted that the Superintendent of GST and Central Excise has given a reply in Annexure-II dated 23.02.2023 and has stated that the petitioner has attempted to transition the inadmissible amount of ITC under the machinery prescribed for transitioning the input tax credit.

8.It appears that the petitioner has made a higher claim for Rs.32,85,602/- in the new TRAN-1 application filed on 01.12.2022. In any event, before passing the order, the petitioner should have been issued with proper notice. If the case of the Department is that there is an error in the order passed on 22.12.2023, whereby the denial of transition credit was restricted to only Rs.16,42,801/- each and not the amount specified in the impugned order, the Department should have initiated proceedings for rectification of the order dated 22.12.2023.

9.In any event, the impugned order dated 28.02.2023 has been passed without following the principles of natural justice, as no notice was issued to the petitioner.



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10. Considering the overall facts and circumstances of the case, I am inclined to direct the respondents to keep all the recovery proceedings pursuant to the impugned order dated 28.02.2023 in abeyance, as the said order has been effected in the order dated 22.12.2023.

11. In case, there is any rectification of mistake warranted, it is for the Department to initiate appropriate proceedings to rectify the aforesaid order dated 22.12.2023 after due notice to the petitioner. In case, the respondents want to proceed against the petitioner pursuant to the impugned order, they shall issue proper notice to the petitioner and adjudicate the same in accordance with law.

12. With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No  
Internet : Yes / No  
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To

The Assistant Commissioner (ST) (FAC),  
Madurai Rural (East) Assessment Circle,  
Commercial Tax Buildings,  
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**C.SARAVANAN, J.**

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