IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.35024 of 2022
and
W.M.P. Nos.34458 and 34461 of 2022

Geethanjali .. Petitioner

vs

The Assistant Commissioner of CGST & CE
Coimbatore Audit Circle II,
1065, Rakavis Towers,
Trichy Road,
Ramanathapuram,
Coimbatore - 641 045. ... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, to call for the records of the respondent in Ref. No.COIMBATORE AUDIT CIRCLE II/SMALL/APR-40/P.No.70-DIN 20221259XT0200000D9C3 and quash the proceedings dated 12.12.2022 passed therein.

For Petitioner	:	Mr.B. Raveendran
For Respondent	:	Mr.Sai Sujan Tayi Senior Panel Counsel for Customs

ORDER

The petitioner has challenged the impugned notice dated 12.12.2022 issued by the respondent. Under the impugned notice on account of the alleged mismatch, the respondent has intimated the petitioner about the amount they are liable to pay towards CGST and SGST in respect of tax invoices, dated 27.01.2018, 29.01,2018 12.02.2018, 12.02.2018 and 15.02.2018.

2. According to the respondent though the input tax credit in respect of the aforementioned invoices has been claimed by the petitioner, the supplier has not paid the tax amounts to the respondent. A detailed reply has been sent to the impugned notice dated 12.12.2022 by the petitioner dated 06.01.2023. As seen from the reply it has been acknowledged by the Superintendent of the GST department on the same date i.e., 06.01.2023 itself. The contention of the petitioner is as follows :-

a) Despite having furnished the details of the Seller to the respondent in respect of the aforementioned invoices, the respondent has once again sent the impugned notice to the petitioner.

b) The petitioner's reply sent earlier has not been considered by the respondent and in the said reply they had raised several objections in respect of the subject claim made by the respondent on account of the alleged mismatch.

c) Only in exceptional cases in case of collusion between the seller and the purchaser, the respondent can proceed against the purchaser, the petitioner herein.

d) the respondent has not followed the press note issued by the GST council, which is the highest authority in the Department of Revenue. The respondent failed to note that the Assessment Years involved in the impugned proceedings are 2017-18, 2018-19 and 2019-20 and Section 42 of the GST Act was omitted only from 01.10.2022 and therefore, the law as on that date is to be followed.

3. The petitioner has also relied upon certain decisions of the Hon'ble Supreme Court in support of her stand.

4. Admittedly, the petitioner has challenged only the notice in this writ petition. No final orders have been passed by the respondent in respect of the amounts claimed by them in the impugned notice against the petitioner. Even before a final order has been passed, the petitioner has

chosen to file this writ petition, which in the considered view of this Court is premature. However, the adjudicating authority will have to necessarily consider the reply submitted by the petitioner in respect of the impugned notice dated 12.12.2022 on merits and in accordance with law. As seen from the impugned notice only an intimation has been made by the respondent to the petitioner about the proposal to reverse the input tax credit availed by the petitioner and no final order has been passed. Hence, the question of entertaining this writ petition at this stage will not arise.

5. For the foregoing reasons, this writ petition is disposed of by directing the adjudicating authority to give due consideration to the reply dated 06.01.2023 submitted by the petitioner and to take a final decision on merits and in accordance with law and the respondent, if they come to the conclusion that the reply is acceptable to them, they shall drop any further proceedings against the petitioner, but if they decide otherwise, the respondent shall follow the due procedure established under law for taking further action against the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2023

Index:Yes/No
Neutral Citation:Yes/No
vsi2

ABDUL QUDDHOSE, J.

vsi2

To
The Assistant Commissioner of CGST & CE
Coimbatore Audit Circle II,
1065, Rakavis Towers,
Trichy Road,
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Coimbatore - 641 045.

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