

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.23242 of 2018

and

WMP No.27125 of 2018

M/s.Sri Gayathri Cashews,
Rep. by its Partner,
Mr.S.Rajanikanth,
113, North Street,
Panickenkuppam,
Panruti (T.K.),
Cuddalore District 607 106.Petitioner

vs

The Assistant Commissioner of GST
and Central Excise,
No.1, VallalarNagar, Manjakuppam,
Cuddalore 607 001.Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the impugned proceedings of the respondent in Order No.38/CUD/2018/2018-2019/Rejection dated 19.07.2018 and quash the same as passed contrary to the provisions of the Central Goods and Services Tax Act, 2017 and in violation of the principles of natural justice and further direct the respondent to refund the integrated tax of Rs.75,67,642/- claimed by the petitioner for the period from October 2017 to March 2018 in their application dated 14.06.2018.

For petitioner : Mr.P.Rajkumar

For Respondents : Mrs.R.Hemalatha
Senior Standing Counsel

O R D E R

The petitioner is aggrieved against the order of the respondent dated 19.07.2018, rejecting the petitioner's refund claim.

2.The petitioner assessee sought refund of integrated tax to the tune of Rs.75,67,642/- based on certain reasons and grounds raised in the application for refund, one submitted through online on 14.06.2018 and another submitted in person on 19.06.2018. A deficiency memo dated 04.07.2018 was issued to the petitioner by pointing out certain deficiencies with a further advise to file a fresh refund application after rectification of the deficiencies pointed out in the said memo. The petitioner through their reply dated 13.07.2018 informed the respondent that the application filed already is in order and thus, requested the respondent to consider their refund application. In the said communication, the petitioner also specifically requested to afford a personal hearing, in case, the respondent is not inclined to accept their submissions. However, without referring to the said reply dated 13.07.2018 received by the respondent on 17.07.2018 and also without providing an opportunity of personal hearing to the petitioner, the present impugned order was passed reiterating the very same reason stated in the said deficiency memo.

3.Mr.P.Rajkumar, learned counsel for the petitioner submitted that when the petitioner has explained in detail as to how the deficiencies pointed out in the Memo dated 04.07.2018 are not factually correct, the respondent is not justified in reiterating the very same reasons in the impugned order, without looking into the contentions raised by the petitioner in the reply dated 13.07.2018. Apart from saying so, the learned counsel further contended that the respondent ought to have given personal hearing to the petitioner, as he has not chosen to accept the reasons stated in the reply.

4.On the other hand, the learned counsel for the respondent based on written instruction submitted that when the deficiencies are pointed out through the memo dated 04.07.2018, the petitioner should have filed a fresh refund application instead of asking the respondent to consider the application filed already. Even though it is stated so, the learned counsel admitted that no personal hearing was given to the petitioner, however by contending that such personal hearing was not warranted under the present facts and circumstances of the case.

5.Heard both sides.

6. The petitioner seeks for refund of integrated tax paid

already based on certain reasons and grounds, as set out in their application for refund. This Court, at this stage, is not expressing any view on the merits of the refund claim, as it is for the respondent to consider and decide. Upon considering the facts and circumstances of the present case and submissions made by the learned counsels appearing on either side, it is evident that the respondent has chosen to pass the impugned order not only by ignoring the reply submitted by the petitioner dated 13.07.2018, filed in response to the deficiency memo dated 04.07.2018 and also in violation of the principles of natural justice, as admittedly the petitioner was not afforded with the personal hearing, even though such request was specifically made by the petitioner through their reply dated 13.07.2018.

7. Perusal of the impugned order would show that the respondent has chosen to reiterate the deficiencies already pointed out in the deficiency memo, as the reason for rejecting the refund application, without considering the explanation given by the petitioner, as to how such deficiencies pointed out by the respondent are either improper or not warranted. Therefore, this Court is of the view that the respondent should consider the application already filed by the petitioner once again on merits based on the petitioner's reply dated 13.07.2018 and also after affording a personal hearing to the petitioner. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent for passing a fresh order on merits and in accordance with law, after considering the petitioner's reply dated 13.07.2018 and also by affording an opportunity of personal hearing to the petitioner. The whole exercise shall be done by the respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

vri
To
The Assistant Commissioner of GST
and Central Excise,
No.1, VallalarNagar, Manjakuppam,
Cuddalore 607 001.

+lcc to Ms.R.Hemalatha, Advocate SR.No.64342

W.P.No.23242 of 2018

GMV (20/09/2018)