

In the High Court of Judicature at Madras

Dated : 09.7.2018

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition No.16984 of 2018 & WMP.No.20237 of 2018

M/s.TVS Motor Company Limited,
rep.by its Authorized Signatory

...Petitioner

Vs

1.The Assistant Commissioner, CGST
and Central Excise, Hosur Division,
Thally Road, Hosur-635109.

2.The Commissioner of Central Goods
and Services Tax, No.1, Foulks
Compound, Anaimeedu, Salem-1.

3.The Union of India, rep.by its
Secretary, Ministry of Finance,
Department of Revenue, North
Block, New Delhi-110001.

...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the
records relating to the impugned notice in C.No.IV/16/09/2018
dated 30.5.2018 issued by the 1st respondent and quash the same.

For Petitioner : Mr.R.Parthasarathy for
M/s.Lakshmi Kumaran & Sridharan
Attorneys

For Respondents: Mr.V.Sundareswaran, SPC

ORDER

Mr.V.Sundareswaran, learned Senior Panel Counsel accepts
notice for the respondents. Heard both. By consent, the writ
petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging
the order dated 30.5.2018, which according to the learned Senior
Panel Counsel for the respondents, is only a show cause notice.

3. The petitioner's case is that the impugned order is not a
show cause notice, but a demand, which has been made on the
petitioner without considering the objections filed by the

petitioner and that it is not in the nature of a show cause notice, as a final decision has been taken and communicated to the petitioner. It is further submitted that the impugned order denying a legitimate transitional credit eligible to the petitioner in accordance with Section 140 of the Central General Sales Tax Act, 2017 is illegal and arbitrary and has been passed in violation of the principles of natural justice. It is also submitted that the the first respondent has only made a decision by denying the transitional credit, which the petitioner is statutorily entitled to under Section 140(1) of the said Act.

4. The learned counsel for the petitioner submits that on facts, the petitioner has got an excellent case and when a notice was issued on 04.1.2018 to reverse the credit, within 24 hours, the petitioner submitted a reply dated 04.1.2018, followed by another reply dated 20.1.2018 wherein the petitioner relied upon certain decisions and contended that Since Section 140(1) of the said Act talks about carry forward of CENVAT credit balance in the return as a whole, the petitioner will be entitled to carry forward the balance of Education Cess and Secondary and Higher Education Cess, which are also CENVAT credit.

5. This Court finds that though such a reply has been given, the same has not yet been considered nor adjudicated upon. On a reading of the impugned order, it clearly shows that it is not in the nature of a show cause notice, but a demand by itself whereby the petitioner's claim for transitional credit has been rejected and that they have been directed to reverse the credit along with interest within 15 days from the date of receipt of a copy of the impugned order, failing which, penal action would be initiated for recovery of arrears under Section 79 of the said Act.

6. The respondent submits that the impugned order is only a show cause notice. This Court is unable to agree with the said stand taken by the learned Senior Panel Counsel appearing for the Revenue, as a show cause notice cannot pre-judge the issue. Had the first respondent issued a notice calling upon the petitioner to state as to why the transitional credit claimed by them cannot be granted or should be directed to be reversed, then it would be a different matter. However, in the impugned proceedings, the first respondent denied the credit and all that has been granted is 15 days' time to reverse the credit, which, according to the first respondent, is inadmissible. These are sufficient grounds to hold that the impugned order is in violation of the principles of natural justice. On this ground alone, the petitioner is entitled to succeed.

7. Accordingly, the writ petition is allowed, the impugned order is set aside and it is open to the first respondent to proceed afresh in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner, CGST and Central Excise, Hosur Division,
Thally Road, Hosur-635109.

2.The Commissioner of Central Goods and Services Tax, No.1, Foulks
Compound, Anaaimedu, Salem-1.

3.The Secretary to Union of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

+1cc to M/s.Lakshmi Kumaran, Advocate SR.No.44328

+1cc to M/s.V.Sundareswaran, Advocate Sr.No.44327

MP (CO)
sm:23.7.2018

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