

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.832 OF 2020

&

WMP.NO.1004 OF 2020

M/s.Shriram City Union Finance Ltd.,  
Represented by its Managing Director,  
R.Chandrasekar  
No.221, Royapettah High Road, Mylapore,  
Chennai-600 004.

... Petitioner

..Vs..

1. The Principal Commissioner of GST and Central Excise,  
Chennai North Commissionerate,  
No.26/1, Mahatma Gandhi Road,  
Chennai-600 034.

2. The Assistant Commissioner of GST and Central Excise,  
Chennai North Commissionerate,  
No.26/1, Mahatma Gandhi Road,  
Chennai-600 034.

.... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records on the files the 2<sup>nd</sup> Respondent in passing the impugned Notice No.08/2019-GST in C.No.V/15/GST/01/2019-AdjN dated 26.11.2019 and quash the same as illegal, arbitrary and devoid of merit.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.T.Pramod Kumar Chopda  
Senior Standing Counsel

O R D E R

Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel for the respondents.

2. The challenge made out is to a show cause notice dated 26.11.2019 issued by R2, the Assistant Commissioner of GST and Central Excise. The show cause notice is issued in terms of Section 73 (1) of the Central Goods and Services Tax Act, 2017 (CGST Act) and the subject matter is the input tax credit (ITC) that has been carried forward on by the petitioner in TRAN-1 from the era of Service Tax under Finance Act, 1994 to the era of GST.

3. The argument of Mr.Sivaraman revolves around the language deployed in the show cause notice. He states that it is very clear that the Officer intends to recover the input tax when such ITC has not even been set off by the petitioner and still continues to be reflected in the credit ledger. In such an event, there is no question of recovery since the credit remains only as credit and has not been set off against tax liability.

4. Per contra, Mr.Chopda would point out that the challenge in this writ petition is premature, insofar as what is challenged is only a show cause notice calling upon the petitioner to file a reply, which could well have been done by it. He would state that there is no necessity for any order quantifying the demand to have been passed prior to issuance of the present show cause notice as that is what the officers seeks to do under the present notice. Moreover, as regards the availment of credit, that question would arise only once proceedings for assessment have been initiated by the Officer. It is thus hypothetical and pre-mature to consider this aspect, at the stage of issuance of show cause notice.

5. Having heard both learned counsel, I am of the view that this writ petition is, as Mr.Chopda says, premature. No doubt, the language in which the notice is couched may indicate recovery, which cannot be effected under a show cause notice. The officer states that the taxable person is 'not eligible to carry forward the credit to their electronic credit ledger even though they may be lying in balance in their return relating to the period ending with the day immediately preceding the appointed day i.e. 01.07.2017'. Further, he refers to 'recovery' of the Cenvat credit that has been wrongly transitioned. In my view, the appropriate term to have been used would be 'reversal' and not 'recovery' at the stage of show cause notice.

6. However, the tenor of the notice is to question the veracity or otherwise of the ITC that has been carried forward and I am not inclined to interfere at this stage.

7. As to the actual availment of credit, this is a question of fact and I am not inclined to go into the extract of

the of the electronic credit register to which my attention is drawn, as this is a matter to be looked into by the authorities in the course of the proceedings for assessment under the impugned show cause notice itself.

8. A perusal of the notice indicates that there was a verification of the Form TRAN-1 by the Audit Department of the GST and it was noticed that Cenvat credit had been availed on various services relating to investments in shares, debentures, mutual fund, securitization etc. The officer was of the opinion that since the receipts from the aforesaid avenues was exempted, the availment of the credit was itself not in order. The availment of Cenvat credit on services related to the provision of food, accommodation and travels was also questioned by the Officer on the ground that it is not eligible. The same goes with regard to the credit related to registry operations, custodial services, trustee for debenture and convertible note issues, securitization facilities as well as services related to parking and auction seized vehicle.

9. Thus the Officer classifies the aforesaid services as those in respect of which Cenvat credit ought not to have been transitioned in terms of Section 141 of the Act, per se. Let the petitioner put forth its objections in regard to the proposed reversal of carried-forward of input tax credit within a period of four weeks from today. Such objections will be considered, the petitioner heard and orders passed within a period of four weeks from date of receipt of the petitioner's objection, in accordance with law. This writ petition is dismissed. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

SKA

To

1. The Principal Commissioner of GST and Central Excise,  
Chennai North Commissionerate,  
No.26/1, Mahatma Gandhi Road,  
Chennai-600 034.

WEB COPY

2. The Assistant Commissioner of GST and Central Excise,  
Chennai North Commissionerate,  
No.26/1, Mahatma Gandhi Road,  
Chennai-600 034.

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.16754

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VBM(CO)  
CS/08/07/2021



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