IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15938 of 2021
and
W.M.P.No.16836 of 2021

M/s.HEC India LLP,
Rep., by its Authorized Signatory,
Kim Inhan,
New No.41, Old No.15/3, 2nd Floor,
Velachery Road, Little Mount,
Saidapet, Chennai-600 035. ..Petitioner

-vs-

1.Commissioner of GST and Central Excise
Audit-II Commissionerate,
No.692, 6th Floor, MHU Complex,
Anna Salai, Nandanam, Chennai-600 035.

2.Assistant Commissioner of GST & Central Excise,
E.V.R.Periyar Malligai, No.690, Annasalai,
Nandanam, Chennai-600 035. ..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to permit the petitioner to debit a sum of Rs.47,30,457/- (Rupees Forty Seven Lakhs Thirty Thousand Four Hundred and Fifty Seven Only) from its electronic credit ledger as shown in the said ledger.

For Petitioner : Mr.Adithya Reddy

For Respondents: Mr.Rajendran Raghavan,
Senior Standing Counsel

ORDER

The relief sought for in the present writ petition is to direct the respondents to permit the petitioner to debit a sum of Rs.47,30,457/- form its electronic credit ledger.

2.The petitioner is the authorized signatory of the Hyundai Motor Group and was established in the year November, 2006 to provide engineering and construction services. The Department has blocked the petitioner's Input Tax Credit (ITC) to the tune of Rs.47,30,457/-. The ITC is proposed to be reversed to the tune of Rs.13,41,543/- (CGST) and Rs.13,41,543/- (SGST) on the basis that there was a mismatch between the ITC claimed by the petitioner in their GSTR3B and the ITC reflected in the GSTR2A for the period 2017-18 and 2018-19. The show cause notice also claimed that the petitioner availed ITC for import purchase based on a Bill of Landing, which did not mention the petitioner's GSTIN number. The petitioner has submitted a detailed representation before the first respondent on 22.06.2021 explaining why the blocking of ITC is erroneous in the petitioner's case and requested them to withdraw the same, but there was no response by the respondents.

3.The fact reveals that a show cause notice was issued by the second respondent on 17.12.2020. In the said show cause notice, issue no.2 deals with "non-reversal of input tax credit not reflected in GSTR2A: (CGST - Rs.13,41,543/- + SGST - Rs.13,41,543/-". Further, the show cause notice reveals that "the excess amount of ITC wrongly taken which was not available in GSTR2A is liable to be reversed under Section 73(1) of CGST Act, 2017/TNGST Act, 2017. The wrong availment of excess ITC availed in GSTR3B works out to CGST - Rs.13,41,543/- SGST - Rs.13,41,543/-".

4.The issue, which is raised in the present writ petition is in the process of adjudication before the competent authority. The petitioner also made a submission that they have submitted a representation to withdraw the blocking of ITC. Under these circumstances, the authorities competent has to consider all these aspects.

5.Intermittent intervention by the High Courts in a writ proceedings are not desirable, as the same would cause prejudice to the interest of the either of the parties. The petitioner claims that blocking of ITC is erroneous. The show cause notice issued by the Department would reveal that certain allegations are raised against the petitioner. All these aspects require an adjudication based on the documents and evidences to be produced by the respective parties. Thus, the petitioner is at liberty to redress their grievances before the competent authorities and this Court cannot issue any such direction as such prayed for, as the proceedings are in progress. The authorities are directed to conclude the proceedings as expeditiously as possible.

With the above observations, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

abr
To

1.The Commissioner of GST and Central Excise
Audit-II Commissionerate,
No.692, 6th Floor, MHU Complex,
Anna Salai, Nandanam, Chennai-600 035.

2.The Assistant Commissioner of GST &
Central Excise,
E.V.R.Periyar Malligai, No.690, Annasalai,
Nandanam, Chennai-600 035.

+1 CC to Mr. Rajendran Raghavan, Advocate sr 36994
+1 CC to Mr. Rajnish Pathiyil, Advocate sr 37347
+1 CC to Mr. Aditya Reddy, Advocate sr 37247.

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SPD(CO)
SP(19/08/2021)