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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.19863 of 2021

and

W.M.P.Nos.21121 & 21123 of 2021

(Through Video Conferencing)

M/s. SSD Oil Mills Limited,
Represented by its
Chief Manager - Accounts,
No.52, 48th Street,
Ashok Nagar, Chennai.

... Petitioner

Vs.

1.Joint Commissioner of
Central Taxes (Appeals - II),
Newry Towers, 2054,
I Block, 12th Main Road,
2nd Avenue, Anna Nagar West,
Chennai - 600 040.

2.Deputy Commissioner of Central Tax,
Vadapalani Division,
GST South Commissionerate.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned order in Appeal bearing No.188/2021 dated 08.06.2021 passed by the first respondent and quash the same.

For Petitioner : Mr.G.Natarajan

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

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorari, to call for the records of the impugned order dated



08.06.2021 passed by the first respondent in Order-in-Appeal No.188/2021 and to quash the same.

2. It is the case of the petitioner that the petitioner had supplied 1035 Boxes of "Great Chef Bakery Vanaspati" vide Invoice No.1418 dated 18.12.2020 to M/s.Sumermal Surana Traders Aurangabad on the purchase made by M/s.Puneri Foods and Fats Pvt. Ltd., Pune. It is further case of the petitioner that the petitioner had generated an E-Way Bill for the goods being supplied to the said M/s.Sumermal Surana Traders Aurangabad at the behest of the said M/s.Puneri Foods and Fats Pvt. Ltd., Pune.

3. The learned counsel for the petitioner submits that after the invoice was generated, the petitioner had also given a Credit Note to the buyer for a sum of Rs.31,050/- including the IGST of Rs.1,478.57. He further submits that when the consignment was in transit, the Karnataka State GST officials has intercepted the vehicle and verified the value in the Invoice generated by the petitioner and the amount mentioned in E-Way Bill. The learned counsel for the petitioner submits that the buyer, namely M/s.Puneri Foods and Fats Pvt. Ltd., Pune had also generated another E-Way Bill. As there was a mismatch between the two E-Way Bill and invoice raised by the petitioner, the Karnataka State GST officials detained the goods and directed the petitioner to pay tax and the equal amount of penalty for release of the goods.

4. It is also submitted that considering the edible and the perishable nature of the goods, the petitioner paid the tax and penalty as proposed by the Karnataka State GST officials. It is submitted that by mistake, the petitioner proceeded to pay tax and the penalty equivalent to the tax under CGST and SGST, so as to ensure the goods reach the destination in time.

5. It is also submitted that after making payment, the Karnataka State GST officials asked the petitioner to pay IGST and penalty of equivalent amount as the transaction was for the interstate supply. Under these circumstances, the petitioner once again paid an amount of Rs.82,000/- as IGST and equal amount of R.82,000/- as IGST penalty totaling to Rs.1,65,600/-. Therefore, the goods have been released vide Release Order dated 24.12.2020 in Form GST-MOV-5.

6. It is submitted that a Show Cause Notice dated 21.12.2020 in GST-MOV-7 has been issued and an order dated 22.12.2020 in GST-MOV-9 has been passed confirming the tax demand of



Rs.82,800/- and equal amount of penalty by the Karnataka State GST officials. As the penalty of Rs.82,800/- each under CGST and SGST was wrongly paid by the petitioner, the petitioner approached the respondents by way of Refund ARN No.AA330121001438Z, dated 02.01.2021.

7. The learned counsel for the petitioner further submits that in response to the refund claim filed by the petitioner, a Show Cause Notice in Form RFD-08 was issued by the officers of the second respondent. It is submitted that as the petitioner informed over phone that they were unable to download the Show Cause Notice in Form RFD-08 from the GSTIN login, it was later sent through mail on 27.01.2021. The petitioner later replied to the same by attaching all documents stating that the amount claimed by the petitioner was to be refunded as there is multiple payment of tax by the petitioner.

8. The learned counsel for the petitioner further submits that by an order dated 02.02.2021 in Form-GST-RFD-06, the second respondent has rejected the refund claim of the petitioner as the petitioner has neither appeared for personal hearing nor responded electronically within the stipulated time to the Show Cause Notice.

9. The learned counsel for the petitioner submits that the petitioner has also filed an appeal before the first respondent in A.No.90/2021/GSTA-II/JC/CS on 26.03.2021. The said appeal was dismissed by the first respondent concluding that DRC-03 filed by the petitioner showing the payment made as penalty under CGST and SCGST and other DRC-03 showing the payment made for tax and penalty under IGST had not mentioned "Section under which voluntary payment is made as 73(5)" and the reasons for the payment was not mentioned in the said copies of DRC-03 and it was left as blank.

10. The learned counsel for the petitioner submits that the reasoning given in the impugned order is erroneous and therefore the impugned order is liable to be quashed. He further submits that if an opportunity is given to the petitioner to explain the case before the second respondent, the petitioner will be satisfied.

11. Defending the impugned order, the learned Standing Counsel for the respondents submits that the petitioner contacted the office of the second respondent on 27.01.2021 and informed that the Show Cause Notice issued in Form GST RFD 08 was not available in the common portal and a copy of the same



was requested by the petitioner. It is submitted that office of the second respondent sent a E-mail to the petitioner on 27.01.2021 attaching the copy of Show Cause Notice in Form GST RFD 08. However, the petitioner did not file any reply in Form RFD 09 electronically in common portal as is mandated under Rule 92(3) of CGST Rules, 2017.

12. The learned Standing Counsel for the respondents further submits that the petitioner also did not appear before the second respondent for a personal hearing and under these circumstances, the refund claim was rejected vide order dated 02.02.2021. The learned Standing Counsel for the respondent further submits that there is no merits in the present Writ Petition and therefore prays for dismissal of this Writ Petition.

13. Heard the learned counsel for the petitioner and learned Standing Counsel for the respondents and perused the impugned order.

14. Prima facie the fact remains that the petitioner by mistake paid tax and the penalty of Rs.82,800/- each under CGST and SGST and thereafter, another sum of Rs.82,800/- each towards IGST and penalty for the consignment apart from charging IGST at the time of clearance in their invoice. Question of imposing penalty towards CGST and SGST would arise only if the petitioner had defaulted in payment of tax under the provision of the Central Goods and Services Tax Act, 2017 and State Goods and Services Tax Act, 2017 at the time of effecting supply.

15. Since there is no determination of any liability under the aforesaid respective Act, prima facie it appears that the petitioner is entitled to refund of claim. However, it would require proper verification by the respondents. Considering the same, the impugned order passed by the first respondent is quashed and the case is remitted back to the second respondent to pass a speaking order on merits and in accordance with law, within a period of thirty (30) days from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard in person or through Video Conferencing before passing such order.

16. The petitioner is given liberty to file additional representation, if any, within a period of fifteen (15) days from the date of receipt of a copy of this order.



17. Accordingly, this Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

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SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Joint Commissioner of Central Taxes (Appeals - II),
Newry Towers, 2054,
I Block, 12th Main Road,
2nd Avenue, Anna Nagar West,
Chennai - 600 040.

2.The Deputy Commissioner of Central Tax,
Vadapalani Division,
GST South Commissionerate.

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