IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. No.2408 of 2021
and
C.M.P.No.15394 of 2021

M/s. F1 Auto Components Pvt. Ltd.,
rep. by its Managing Director,
Nos.150 and151, 12th Main Road,
SIDCO Industrial Estate, Thirumudivakkam,
Chennai – 600 044.

...Appellant

Vs

The State Tax Officer,
Survey Cell-1 Intelligence-II,
Chennai – 600 123. ...Respondent

Prayer : Writ Appeal filed under clause 15 of Letters Patent against the final order, dated 09.07.2021 passed by this Court, in W.P.No.6631 of 2021.

Prayer in W.P.No.6631 of 2021: Praying to issue Writ of Certiorari Calling for the records of the respondent in his proceedings in GST INS-01/102/2020-2021/ Survey-1/ In Vestigation-II quash the order dated 27.1.2021 passed therein.

For Appellant : Mr.P.V.Sudakar

For Respondent : Mr.M.Venkateswaran
Govt. Counsel

JUDGMENT
Delivered By Krishnan Ramasamy,J.,

This intra Court Appeal has been filed, challenging the order passed by the learned Single Judge in W.P.No.6631 of 2021, dated 09.07.2021

2.The appellant herein has filed the Writ Petition praying to issue a writ of certiorari to call for records of the respondent, in his proceedings in GST INS-01/102/2020-2021/Survey-1/Investigation II, dated 27.01.2021 and to quash the same.

2.1 The learned Single Judge after hearing both sides, set aside the interest levied under Section 50 of the Central Goods and Services Tax Act, 2017 (for short, CGST) insofar as the remittance made by way of adjustment through electronic credit register, in the light of the decision rendered by this Court, in re Maansarovar Motors Pvt. Ltd. Vs. The Assistant Commissioner, Poonamallee Division, Chennai, dated 29.09.2020. So far as the interest levied on belated cash remittances is concerned, the learned Single Judge confirmed the same. Challenging the said confirmation, this Writ Appeal is filed.

3.The learned counsel appearing for the appellant submitted that the respondent conducted a surprise inspection at the place of business of the appellant on 18.09.2020 and, pursuant to a summons issued, books of accounts/records for the assessment year 2018-19 were produced before the respondent and on the scrutiny of the same, the respondent issued a show cause notice, dated 28.11.2020, (which was served on the appellant on 04.12.2020), stating that certain purchases, for which, Input Tax Credit (ITC) availed by the appellant were not found auto-populated in GSTR-2A and hence, ITC on such purchase were to be disallowed. Immediately thereafter, the appellant remitted a sum of Rs.5,05,240/- in cash towards CGST liability and a sum of Rs.11,527/- in cash towards SGST liability and sum Rs.4,89,502/- towards SGST liability through the electronic credit ledger. The learned counsel contended that, as far as the remittances through electronic credit ledger is concerned, the learned Single Judge was pleased to allow the claim in favour of the appellant, but, insofar as the remittances made in cash is concerned, the learned Single Judge negatived the claim.

3.1 The main contention of the learned counsel for the appellant is that, there were certain discrepancies, only the supplier has not reflected about the supply made to the appellant and it is not the fault of the appellant but due to the reason of the supplier. In these circumstances, the learned counsel referred to Section 42 (3) of the TNGST Act and submitted that, as per Section 42 (3), the respondent is supposed to have issued notice in Form GST MIS-I to the supplier and GST MIS-II to the recipient for rectification of the discrepancies (mismatch) and only in the event of the failure of the supplier or recipient to rectify the discrepancies within the prescribed period, the amount to the extent of the discrepancy (ITC claimed by the appellant on the purchases not reflected in GSTR-2A) could be added to the output tax liability of the recipient and also liable to pay interest under Section 50 (1) of the TNGST Act. Therefore, the learned counsel contended that without issuing any notice under Section 42 (3), the respondent wrongly imposed the interest on cash remittances and the learned Single Judge also has not gone into this aspect and negatived the claim. The learned counsel further contended that only as an abundant caution so as to avoid penalty towards future liability, the appellant has remitted the amount immediately upon receipt of the show cause notice, and the same cannot be misconstrued, as if, the appellant admitted their liability. Therefore, the learned counsel prayed to set aside the order passed by the learned Single Judge.

4. Per contra, the learned counsel for the respondent would submit that only in cases, where there is any mismatch/ discrepancy, the respondent-Department would normally issue notice under Section 42 (3) both to the supplier and recipient seeking for rectification. In the present case, necessity for issuing such notice doest not arise for the simple reason that the moment the respondent issued the show cause notice, dated 28.11.2020, proposing to disallow the claim of ITC availed by the appellant, the appellant, at once, remitted the entire liability and this would per se show that the appellant has admitted the liability and wrongful availment of ITC. Further, the learned counsel contended that the respondent has availed ITC for the purchase not reflected in Form GSTR-2A, dated 28.12.2020 & 12.01.2021 respectively. Therefore, the learned counsel submitted that all these aspects have been considered by the learned Single Judge, which warrants no interference.

5.We have heard the learned counsel for both sides and perused the materials available on record.

6.Upon perusal of the records, it appears that the appellant has availed ITC on the purchase effected from the registered dealer.Subsequent to the inspection conducted by the respondent, it was found that the purchases said to have made by the appellant from the registered dealer have not been reflected in the GSTR-2A dated 28.12.2020 and 12.01.2021. Therefore, show cause notice was issued.

7.Now, the issue to be decided in this matter is whether the respondent needs to issue notice under Section 42 (3) of the TNGST Act. to the supplier as well as the recipient.

7.1 Certainly, Section 42 (3) notice needs to be issued, in the event, if there is any discrepancies/mismatch noticed by the Department.But ironically, in the present case, show cause notice was issued on 28.11.2020, which was served on the appellant in 04.12.2020.Immediately thereafter, the respondent disallowed the ITC claim, pursuant to which, the appellant has remitted the amount towards CGST and SGST liability both by way of cash and through electronic credit register. In fact, even in the reply to the show cause notice, the appellant themselves have admitted to pay the interest at appropriate rate on hearing from the respondent. The reply further states about the payment of tax liability on account of disallowance of ITC.

7.2Thus, it could be easily inferred from the conduct of the appellant that there was no discrepancy or mismatch in the supplies, but ITC was wrongly availed. If it were the appellant's contention that they have purchased the goods from the registered dealer, then, they ought to gave explained the same in their reply to the show cause notice, and waited and contested the matter on merit, but without doing so, the appellant has straightaway remitted the tax liability, without any demur. Thus, in the absence of any dispute raised by the appellant against the reversal of ITC, there is no need for the respondent to issue notice under Section 42 (3) TNGST Act. Only in the event, the appellant raised dispute against the reversal of ITC, the necessity to issue notice under Section 42 (3) TNGST Act would arise.

7.3 Therefore, we are of the firm view that there is no necessity for the respondent to issue notices under Section 42 (3) of TNGST Act to the supplier as well as the recipient and any Forms GST MIS-I and GST MIS-II akin thereto. The learned Single Judge also discussed this aspect elaborately and passed an order, confirming the levy of interest on belated cash remittances. Therefore, we do no find any infirmity in the order passed by the learned Single Judge, insofar as it relates to the confirmation of interest levied on belated cash remittances is concerned.

8.Accordingly, the Writ Appeal fails and it stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,
Survey Cell-1 Intelligence-II,
Chennai - 600 123.

W.A.No.2408 of 2021

RSV(CO)
RGA(06/01/2022)