IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3819 of 2022
and W.M.P.No.3950 of 2022

M/s.Devmata Exim Private Limited
Rep.by its Director Siva Kumar
No.770/A, 1st Floor, T.H.Road
Chennai 600 081. …. Petitioner

-Vs-

The Superintendent of GST & CE
Enforcement and Compliance Management
Office of the Principal Commissioner of GST
Chennai North Commissionerate
No.26/a, Mahatma Gandhi Road
Chennai - 600 034. …. Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondent or any officer claiming to be subordinate to him, from insisting the payment of the amount of Rs.10,00,28,918.00 as claimed in the proceedings of the respondent in C.No.IV/06/88/2018-HPU Gr.IX (DIN No.20211159TK0000323573) dated 23.11.2021 by any coercive proceedings being the amount not deposited by the seller / supplier of goods to be petitioner during the period July 2017 to October 2018 without due process of law.

For Petitioner : Mr.M.A.Mudimannan

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

O R D E R

The prayer sought for herein is for a Writ of Mandamus forbearing the respondent or any officer claiming to be subordinate to him, from insisting the payment of the amount of Rs.10,00,28,918.00 as claimed in the proceedings of the respondent in C.No.IV/06/88/2018-HPU Gr.IX (DIN No.20211159TK0000323573) dated 23.11.2021 by any coercive proceedings being the amount not deposited by the seller / supplier of goods to be petitioner during the period July 2017 to October 2018 without due process of law.

2. The petitioner is a dealer registered under the GST Act with the Central GST administration. The petitioner received a notice from the Revenue, under the head 'Most Urgent' on 23.11.2021 with following content.

> "The Enforcement and Compliance Management, Chennai North Commissionerate have detected a case of fraudulent passing of ITC Credit by M/s.Nadesh Trade Implex Private Limited (33AAFCN3545B1ZX), M/s.Vivan Trade Impex Private Limited (33AAFCV6608K1Z4), M/s.Anmol Ferro Impex Private Limited (33AACA0948A1Z8) to numerous recipients / availers including you has been detected. Strict legal action has already been initiated against the suppliers including arrest of the offenders, where required. The investigation is on going and would be concluded by legal action against all involved including the recovery of the inadmissible ITC and imposition of penalties.
>
> The supplier's records indicate that he has passed on inadmissible ITC of Rs.10,00,28,918/- to you. It is strongly advised that you may not avail the same and, if already availed immediately reverse the same along with due interest thereon under intimation to the undersigned. The amount indicated herein has been determined by the investigation done so far and this may not be the final amount.
>
> This advisory is being issued in order to give taxpayers an opportunity to voluntarily comply with the law. Due consideration would be given to your prompt compliance while concluding the investigation. No further advisory would be issued.
>
> Please contact the undersigned in case of any clarification."

3. On receipt of the said notice / communication, the petitioner has moved this writ petition seeking for a writ of Mandamus forbearing the respondent from insisting the payment of a sum of Rs. 10,00,28,918/-, as claimed in the proceedings dated 23.11.2021.

4. Heard the learned counsel for the petitioner who would submit that, first of all the claim made through the said notice of the revenue that the input tax credit amount referred to above passed on from three suppliers to the petitioner was genuine input tax credit which the petitioner claimed. However

so far the petitioner has not claimed the input tax credit to the extent mentioned in the notice. At this juncture, in view of the said notice the petitioner is precluded from claiming the input tax credit. He also would submit that, since so far the petitioner has not availed the input tax credit the question of reversing the same does not arise, however the petitioner is having an opportunity to give reply to the said communication to avail the input tax credit as according to the petitioner, the said amount of input tax credit passed on to the petitioner is a genuine amount.

5. Per contra, the learned Standing Counsel would submit that, if at all the petitioner wants to make any reply or to make any further request to the Revenue he can do so. But, without choosing to make any such request or reply to the notice dated 23.11.2021 he has rushed to this court seeking prohibitory order to the respondent Revenue as if that the respondent is not empowered or entitled to seek for such restrainment of the petitioner not to avail the input tax credit.

6. If the input tax credit is not so far claimed or availed by the petitioner, let the status continue till further decision is taken in this regard for which it is open to the petitioner to make application to the revenue as to how legally and validly the petitioner is entitled to claim this input tax credit for a Rs.10,00,28,918/-.

7. I have heard the learned counsel appearing for the petitioner as well as the Leonard standing counsel appearing for the revenue and have perused the materials available on record.

8. Since it has been categorically stated by the learned counsel for the petitioner that so for the petitioner has not availed the input tax credit for a sum of Rs.10,00,28,918/- as has been indicated in the communication dated 23.11.2021, the question of reversal of input tax credit as on date does not arise.

9. But at the same time the right of the petitioner to claim the input tax credit or avail the input tax credit for the said amount it is to be decided by the revenue for which it is open to the petitioner to make a request to the revenue for permitting the petitioner to avail the said amount as input tax credit, as according to the petitioner it is a genuine one arising out of genuine transaction from various suppliers of the petitioner.

10. In view of the aforesaid factual position as has been asserted by the learned counsel for the petitioner and having regard to the submissions made with learned standing counsel for the revenue, this Court is inclined to pass the following order.

11. That the prayer sought for by the petitioner seeking prohibitory mandamus cannot be granted. Therefore the said prayer in this writ petition is liable to be rejected. Accordingly it is rejected.

12. However it is open to the petitioner to make a request to the respondents seeking for permission to claim the input tax credit for a sum of Rs.10,00,28,918/- if the petitioner is advised to make such a request. It is also made clear that as has been asserted by the learned counsel for the petitioner that the petitioner so far has not availed the said amount as input tax credit, the question of reversal of input tax credit as on date does not arise and this point canvassed by the learned counsel for the petitioner is subject to the verification to be made by the revenue in this regard.

13. With these directions, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KST

To

The Superintendent of GST & CE, Enforcement and Compliance Management Office of the Principal Commissioner of GST, Chennai North Commissionerate
No.26/a, Mahatma Gandhi Road
Chennai - 600 034.

+1cc to Mr.Pramod Kumar, Advocate, S.R.No.12854
+1cc to Mr.K.Jayachandran, Advocate, S.R.No.12184

W.P.No. 3819 of 2022

MT(CO)
SB(22/03/2022)