IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.15340 of 2022 and
WMP.No.14499 of 2022

M/s.G.K.Shetty Builders Pvt. Ltd.,
rep. by its Managing Director
K.V.Ramana Shetty
Chennai - 31. ... Petitioner

Vs

1.The Joint Commissioner,
Audit - 1 Commissionerate,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.

2.The Additional/Joint Commissioner of Central Tax
& Central Excise,
Chennai North Commissionerate, GST Bhavan,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the show cause notice No.129/2022-Audit-1 dated 31.03.2022 issued by the 1st respondent answerable to the 2nd respondent and quash the same as arbitrary, unsustainable in law and without authority of law.

For Petitioner	:	Mr.M.A.Mudimannan
For Respondents	:	Mrs.Hema Muralikrishnan, Senior Standing Counsel

ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepts notice for the respondents and is armed with necessary instructions to enable this Court to dispose the matter finally even at the stage of admission. Hence, by consent of both sides, this Writ Petition is disposed finally even at this stage.

2. The challenge is to a show cause notice dated 31.03.2022. There is no legal infirmity that has been pointed out in the impugned order. Therefore, I am not inclined to entertain the challenge.

3. The only point that is made out is that the issue raised in the show cause notice relates to the claim of Input Tax Credit (ITC) and the Assessing Authority has sought various particulars in regard to the procedure for matching the same while considering the grant or otherwise.

4. Section 42 of the Central Goods and Services Tax, 2017 (in short 'CGST Act') deals with matching, reversal and reclaim of ITC, and requires the Officer to conduct simultaneous investigation, both with the purchaser and the supplier, to ensure that there is a proper examination of the transaction at both ends. In fact, Section 42(3) provides for this in express terms and is extracted below:

> 42. Matching, reversal and reclaim of input tax credit-
>
> ....
>
> (3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

5. Learned Senior Standing Counsel would draw attention of this Court to Section 42(5) of the CGST Act, in terms of which, a reversal of ITC should be a natural consequence in the event of any discrepancy in the claim.

6. Evidently so. However, what is required is that in matters involving claim of ITC, it is incumbent upon the authority to conduct a proper verification of the transactions of selling/purchasing dealers to ensure that there is a match of the details of the transaction, at both ends. This is why Section 42(3) requires the officer to supply the details of the transaction to 'both such persons' to enable such cross-verification.

7. In this context, reference may also be made to Circular No.5 of 2021 dated 24.02.2021 issued by the Principal Secretary/Commissioner of Commercial Taxes under the Value Added Tax regime, providing for the procedure to be followed in the case of verification of claims of ITC involving selling/purchasing dealers.

8.Paragraph 3.3.5 of the Circular which deals with the procedure has some relevance in matters under TNGST and CGST regime as well and is re-produced below:

"Circular No.5/2021
LW10/12521/2016

Office of the Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.
dated: 24.02.2021

Circular

Sub:	TNVAT Act 2006 - Assessment made on the basis of computed generated mis-match report - Hon'ble Court direction in the case of JKM Graphics - Procedure to deal with such cases - circular issued - Regarding.
Ref:	1. The orders of the Hon'ble High Court in W.P.No.105/2016 dated 01.03.2017. 2. The orders of the Hon'ble High Court in Review Petition No.173 of 2018 in W.P.No.5007 of 2016 dated 12.02.2021.

The Hon'ble High Court of Madras in a batch of cases involving in denial of input tax credit or arising of tax liability due to purchase and sales suppression on the basis of the computer generated mismatch report from the Annexure and II of the returns of the purchaser vis-a-vis seller, has directed that the Commissioner of Commercial Taxes to evolve / devise a mechanism / procedure to exclusively deal with such cases (herein after called as mis-match) in a holistic manner and thus resolve / enable resolution of all such issues under TNVAT Act in its order 1 cited.

....

3.3.5 The Assessing Authority should issue show cause notice along with all the connected to the assessment seeking objections. On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing). The assessing officer shall grant adequate opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu, the Assessing Authority can summon the other end

> dealer and on request, a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days.
> ....

9. In light of the above discussion, the challenge to the notice fails and the petitioner is directed to file its reply to the show cause notice before the Assessing Authority, who, in turn, shall complete the proceedings in light of the observations made above as well as the spirit of the Circular extracted above. The Officer shall scrupulously follow the stipulations under Section 42 of the CGST Act and conduct enquiry with both parties to enable that a wholistic view of the transaction is taken.

10. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner,
Audit - 1 Commissionerate,
No.1775, Jawaharlal Nehru Inner Ring Road,
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2. The Additional/Joint Commissioner of Central Tax
& Central Excise, Chennai North Commissionerate,
GST Bhavan, No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate SR. No. 37939
+1cc to Mr.K.Jayachandran, Advocate SR. No. 37394

W.P.No.15340 of 2022 and
WMP.No.14499 of 2022

PL (CO)
PR (27/07/2022)