IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.2556 of 2023 and
W.M.P. No.2649 of 2023

M/s.Coimbatore Compressor Engineering
Company Private Ltd.,
represented by its Director M.Raveendran ... Petitioner

vs.

1.The Assistant/Deputy Commissioner of GST and
Central Excise,
Coimbatore II Division,
No.1441, Elgi Building,
Trichy Road,
Coimbatore – 641 018.

2.The Deputy Director,
Directorate General of GST Intelligence,
155-1 Lakshmanan Street,
Behind Ukkadam Bus Stand,
Ukkadam,
Coimbatore – 641 001. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in show cause notice SCN No.117/2022-GST dated 19.10.2022 and quashing the same.

For petitioner : Ms.Naveena D

For respondents : Ms.Hema Murali Krishnan,
Standing Counsel for R1

Mr.V.Sundareswaran,
Senior Panel Counsel for R2

ORDER

By consent of both the parties, this writ petition has been taken up for final disposal at the admission stage itself.

2.This writ petition has been filed challenging the show cause notice SCN No.117/2022-GST dated 19.10.2022 passed by the first respondent.

3.The petitioner has challenged the impugned show cause notice dated 19.10.2022 issued under Section 74 of the Central Goods and Services Tax Act 2017 on the ground that the respondents have predetermined the issue by deciding that the goods supplied by the petitioner will fall under Chapters 84 and 85 of the Customs Tariff Act 1975. According to the petitioner, they are supplying the materials exclusively to Railways and the said materials cannot be used for any other purpose as the same is exclusively designed for usage by the

Railways. Therefore, according to them, the classification of GST will fall under Chapter 86, where GST rates are 5% or 12% depending on the period when they were sold. If the classification falls under Chapters 84 and 85 of the Act, the GST levy will be 18%. According to the petitioner, arbitrarily and by total non application of mind and without any data to that effect, the petitioner has been called upon to explain under the impugned show cause notice as to why the classification in respect of the petitioner's goods will not fall under Chapters 84 and 85 of the Customs Tariff Act 1975, which attracts a GST rate of 18%.

4.Heard Ms.D.Naveena, learned counsel for the petitioner, Ms.Hema Murali Krishnan, learned Standing Counsel, who accepts notice on behalf of the first respondent and Mr.V.Sundareswaran, learned Senior Panel Counsel, who accepts notice on behalf of the second respondent.

5.Admittedly, the petitioner has only challenged the show cause notice. It is settled law that the show cause notice can be challenged only on the following grounds:

a)It is issued without jurisdiction;

b)It is issued without authority under law; and

c)It has predetermined the issue.

6.As seen from the impugned show cause notice, the respondents have only stated that the study reveals that barring slight variations in electric specifications/safety parameters etc. fundamentally and functionally they are one and the same. They have not referred to any particular study report.

7.Learned Standing Counsel appearing for the first respondent with regard to the aforesaid observation would submit that the entries in the respective Chapters of the Customs Tariff Act would speak for itself and there is no necessity for any study report. However, the same is disputed by the learned counsel for the petitioner, who would rely upon a judgment of the Hon'ble Supreme Court in the case of **Westing House Saxby Farmer Ltd. vs. Commissioner of C. Ex., Calcutta reported in 2021 (376) E.L.T. 14 (S.C.)**, which is also reflected in the impugned show cause notice. According to the respondents, the same is not applicable to the case of the petitioner.

8.Learned counsel for the petitioner would submit that as per the aforesaid decision of the Hon'ble Supreme Court, it has been made clear that parts sold exclusively for Railways will only fall under Chapter 86 of the Customs Tariff Act 1975.

9.However, as seen from the impugned show cause notice, the respondents have stated that the parts supplied by the petitioner can also be used for other purposes and only on that ground, the show cause notice has been issued stating that the classification will fall under Chapters 84 and 85 of the Customs Tariff Act 1975. The impugned show cause notice has given reasons as to why the classification of the goods will fall under Chapters 84 and 85 of the Customs Tariff Act and not under Chapter 86. If the petitioner is aggrieved by the same, necessarily the petitioner will have to respond to the same stating their objections and producing evidence to show that the classification will fall only under Chapter 86 of the Customs Tariff Act 1975. Even without responding to the impugned show cause notice, the petitioner has approached this Court prematurely challenging the said show cause notice, which in the considered view of this Court is not maintainable, after this Court had given a careful consideration to the contents of the impugned show cause notice.

10.The judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner cannot be considered at this stage in view of the categorical assertion made by the respondents that after making minor alternations, the goods sold by the petitioner to the Railways, can be used for other purposes as well. Therefore, only after a reply is sent by the petitioner to the impugned show cause notice, the real truth can be unearthed. As observed earlier, at this stage, this writ petition cannot be entertained, challenging the impugned show cause notice. However, the petitioner should not be left high and dry, as the impugned show cause notice stipulates that the petitioner will have to submit a reply, within a period of thirty days, which period has already got expired.

11.Accordingly, this writ petition is disposed of by directing the petitioner to submit a reply to the impugned show cause notice dated 19.10.2022 to the respondents, within a period of thirty days from the date of receipt of a copy of this order. On receipt of the same, the respondents shall pass final orders, on merits and in accordance with law, after giving due consideration to the objections raised by the petitioner in the reply to be sent by them, within a period of four weeks thereafter. The respondents are directed to pass final orders uninfluenced by any of the observations made by this Court in this order. Consequently, connected W.M.Ps stand closed. No costs.

02.02.2023

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To

1.The Assistant/Deputy Commissioner of GST and
Central Excise,
Coimbatore II Division,
No.1441, Elgi Building,
Trichy Road,
Coimbatore – 641 018.

2.The Deputy Director,
Directorate General of GST Intelligence,
155-1 Lakshmanan Street,
Behind Ukkadam Bus Stand,
Ukkadam,
Coimbatore – 641 001.

ABDUL QUDDHOSE, J.

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