IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2023

CORAM :

The HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9018 of 2023
and
W.M.P.Nos. 9146 & 9149 of 2023

Alpha Polymers
Rep. By its V Proprietrix,
Neelamkavil Jose Jovina,
Plot No.C-13, Sipcot, Industrial Growth Park,
Perundurai – 638 052.
Erode District. .. Petitioner

vs

1.The Commissioner,
Central Commissionerate,
Division – Erode I, Range – Erode II,
Goods and Service Tax and Central Excise,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.

2.The Assistant Commissioner,
HQRS, Office of the Commissioner of
Goods and Service Tax and Central Excise,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.

3.The Assistant Commissioner,
GST & Central Excise,
Division – Erode I, Range – Erode II,
Perundurai Circle, Erode. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the files of 2nd respondent in DIN 20230159XP0000333DTC dated 05.01.2023 and quash the same and further directs the 1st respondent to consider and pass order on the representation dated 23.02.2022 and reminder letters dated 30.04.2022, 12.07.2022, 07.09.2022, 19.10.2022, 14.11.2022 and 19.12.2022 after grant of opportunity.

For Petitioner	:	Mr.B.Senniappan
For Respondents	:	Mr.T.Rameshkutty Sr.Standing Counsel (GST)

ORDER

Challenging the order of the second respondent dated 05.01.2023 and for a consequential direction to the first respondent to consider and pass orders on the representation dated 23.02.2022 followed by reminders dated 30.04.2022, 12.07.2022, 07.09.2022, 19.10.2022, 14.11.2022 and 19.12.2022, the present writ petition has been filed.

2. The case of the petitioner is registered with the GST authorities and are engaged in the business of rotomolding manufacturing process. According to the petitioner, they are eligible to utilise the input tax credit availed towards output tax liability through Form GSTR 3B. After getting permission to switch over from composition scheme to regular dealer, the petitioner approached the first respondent to submit refund Form GST ITC-01 after due date and the petitioner also submitted a representation

dated 23.02.2022 in this regard followed by several reminders. After a long delay, the petitioner received a letter dated 05.01.2023 from the second respondent intimating that the request of the petitioner has been rejected as there is no notification issued by the Central/State.

3. Learned counsel appearing for the petitioner would submit that the impugned order passed by the second respondent rejecting the application for extension time, is without jurisdiction and inconsistent with Rule 40(1)(b) of GST Rules. He would further submit that keeping the representations pending without passing any orders is against principles of natural justice.

4. Mr.T.Ramesh Kutty, learned senior standing counsel takes notice for the respondents and submits that the second respondent has only intimated the decision of the first respondent/Commissioner, whereby the request of the petitioner for extension of time to file ITC-01 was rejected as there is no notification issued by Central/State in this regard.

5. This Court considered the submissions made by both sides. The petitioner has admittedly made a representation/application for extension of time before the first

respondent and the first respondent instead of passing orders on the said representation, kept the matter pending for nearly a year and thereafter, the second respondent has passed the order impugned in this writ petition stating that the petitioner's request was rejected by the first respondent and the said order has been issued with the approval of the first respondent.

6. In view of the above, the order impugned in this writ petition is set aside and remitted to the first respondent, who shall pass appropriate orders, after hearing the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

7. The Writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

24.03.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

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M.DHANDAPANI,J.

ssm

W.P.No.9018 of 2023

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