



W.P.No.12426 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12426 of 2018

and

W.M.P.No.14554 of 2018

M/s.GRT Hotels and Resorts Private Limited,
Represented by its Chief Executive
Officer-cum-Company Secretary,
No.136, Usman Road,
T.Nagar,
Chennai - 600 017.

... Petitioner

Vs.

The Government of India,
Ministry of Industries and Commerce,
Represented by its Additional Director General of Foreign Trade,
No.26, Haddows Road,
Shastri Bhavan, (Annex),
Chennai - 600 006.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the notice / demand by the respondent herein in F.No.04/SFIS/CO-ORD AM/18, dated 19.03.2018 and F.No.04/SFIS/CO-ORD/AM18, dated 18.04.2018 and quash the same.



W.P.No.12426 of 2018

WEB COPY

For Petitioner : Mr.A.R.Karthik Lakshmanan
for Mr.S.Rajiv Gandhi

For Respondent : Dr.D.Simon
Central Govt. Standing Counsel

O R D E R

The impugned notices / demand passed by the respondent in F.No.04/SFIS/CO-ORD AM/18, dated 19.03.2018 and F.No.04/SFIS/CO-ORD/AM18, dated 18.04.2018 is under challenge in the present Writ Petition.

2. The learned counsel appearing for the petitioner would submit that the petitioner Company is duly incorporated under the Companies Act, 2013 and the petitioner Company has been rendering services to various foreigners and such services are considered as 'Service from India Scheme' (hereinafter referred to as 'SFIS') for the benefit of customs duty. From the year 2009 onwards, such benefits have been given credit to the petitioner. All of a sudden, on 19.03.2018, the respondent has issued a show cause



W.P.No.12426 of 2018

WEB COPY

notice calling upon the petitioner to refund the SFIS benefits availed with interest which is not identified as Indian Brand and to submit an explanation within fifteen days. On receipt of the same, on 02.04.2018, the petitioner has submitted its preliminary objections / reply and the same was acknowledged by the office of the respondent on 02.04.2018. However, without considering the same, the respondent has mechanically issued another demand notice on 18.04.2018. The petitioner has submitted its further reply on 25.04.2018, but the same also has not been considered, which is not sustainable one and which is clearly in violation of principles of natural justice. Hence, the present Writ Petition has been filed.

3. The learned Central Government Standing Counsel appearing for the respondent has filed a detailed counter affidavit by stating that though the petitioner's reply was not mentioned in the impugned order dated 18.04.2018, however, as against the order passed by the respondent, there is an efficacious alternative remedy available before the Appellate Authority. Without exhausting the same, the petitioner has approached this Court by



W.P.No.12426 of 2018

filing the present Writ Petition is not sustainable one, accordingly he prayed for dismissal of the Writ Petition.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. The facts in the present case are not in dispute. The respondent claimed that the petitioner firm has not rendered its services with Indian brand name, for which, the respondent issued impugned notices on 19.03.2018 and again on 18.04.2018 to refund the benefits availed by the petitioner. However, the impugned notices were replied by the petitioner on 02.04.2018 and 25.04.2018. But, without considering the petitioner's reply, the respondent has passed the impugned orders. Hence, the impugned orders are in violation of principles of natural justice and on that ground, the impugned orders are set aside.



W.P.No.12426 of 2018

WEB COPY

6. Accordingly, this Writ Petition is allowed and the impugned orders passed by the respondent are set aside and the matter is remitted back to the respondent for fresh consideration. While reconsidering the same, the respondent is directed to provide an opportunity of being heard to the petitioner and pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

12.04.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



W.P.No.12426 of 2018

WEB COPY

To

The Additional Director General of Foreign Trade,
The Government of India,
Ministry of Industries and Commerce,
No.26, Haddows Road,
Shastri Bhavan, (Annex),
Chennai - 600 006.



WEB COPY



W.P.No.12426 of 2018

M.DHANDAPANI,J.

vji

**W.P.No.12426 of 2018
and
W.M.P.No.14554 of 2018**

12.04.2023