IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1026 of 2023
AND
C.M.P.No.10249 of 2023

Calcutta Canvas Co.
Rep. by its Partner
Vimal Chand Betala
No.119, Audiappa Naicken Street
Chennai 600 079 .. Appellant

Vs.

1.The Union of India
Rep. by its Secretary Government
Ministry of Finance
136-A, North Bloc
New Delhi 110 001

2.Goods and Service Tax Council
Through its Chairman
Goods and Service Tax Secretariat Floor
Tower V, Jeevan Bharathi Building
Janpath Road, Connaught Place
New Delhi

3.The Deputy Commissioner of Service Tax
Range IV, R-40, A1, Second Floor
TNHB Shopping-cum-Office Complex
Mogappair East Officers Trg School
Chennai

4.The Additional Commissioner of Service Tax
Range-IV
MHU Complex, Anna Salai
Chennai 600 035

5.The Nodal Officer (Range IV) Assistant Commissioner
Commissioner of Service Tax, Chennai
Div IV, 692, Anna Salai
MHU Complex, Nandanam
Chennai 600 035

6.The Deputy Commissioner of Central GST and Central Excise
Parrys Division, Chennai North Commissionerate
1st Floor, Newry Tower No.2054-1
Anna Nagar, Chennai 600 040

7.The Principal Commissioner of GST and Central Excise
Chennai North Commissionerate
No.26/1, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034 .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, against the order dated 09.03.2023 passed in W.P.No.12892 of 2020.

For Appellant : Mr.B.Leelesh Sundaram
for Nathan and Associates

For Respondents : Mr.K.Mohanamurali
Standing Counsel

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

This writ appeal has been filed against the order dated 09.03.2023 passed by a learned Judge in W.P.No.12892 of 2020.

2.According to the appellant, they are a registered firm under the Indian Partnership Act, 1932 and a registered dealer engaged in the trading and manufacturing of woven fabrics of cotton canvas, plastics, tarpaulin, tarpaulin synthetic and the like products. During the advent of GST, i.e., 01.07.2017, the appellant had huge opening stocks purchased from traders (not covered under excise invoices), which they have attempted to report by filing Form TRAN-1 under the Act. During the said process, a bonafide error had occurred on their part, by which they have reported the stock details under Column 7(d) instead of 7(b) and because of the error, they suffered a financial loss of Rs.6,76,321/- under the caption of CGST and a sum of Rs.1,50,999/- under the caption of IGST, totalling a sum of Rs.8,27,000/-, which according to the GST Act, seem to be non-rectifiable.

3.The appellant further stated that they approached the Additional Commissioner, Parrys Division (Range-IV), the fourth respondent herein, and submitted its representation dated 12.12.2018, but the same was not considered. Thereafter, the appellant also submitted representation dated 25.06.2019 to the third and fourth respondents with a copy to the fifth respondent requesting an opportunity to rectify the bonafide error. Those representations were also not considered. Hence, the appellant filed W.P.No.26705 of 2019, wherein the learned Judge passed an order on 06.09.2019 directing the appellant to give a representation to the Nodal Officer and the Nodal Officer was directed to pass orders on the same. Accordingly, the appellant submitted a representation to the authorities on 18.11.2019 for which a reply was received from the seventh respondent on 29.11.2019 stating that the representation has been considered and that, the said rectification cannot be approved as the error is not a technical error as per the Notification dated 10.09.2018.

4.With the above background, stating that the error is a bonafide mistake and not wanton, the appellant approached the writ court by filing W.P.No.12892 of 2020 for a mandamus directing the respondents to permit them to correct the bonafide error made in Form TRAN-1.

5.The learned Judge passed the impugned order on 09.03.2023 dismissing the prayer of the appellant, holding that in the light of the judgment of the Hon'ble Supreme Court in *Union of India and another vs. Filco Trade Centre Pvt. Ltd. And another (SLP(C)Nos.32700-32710 of 2018 dated 22.07.2022)*, the mandamus sought for cannot be granted. It has also been held that the primary responsibility falls upon the assessee to ensure that it pursues and obtains the benefit of the judgment and that as on date, the window of benefit that was provided by the Hon'ble Supreme Court, has long gone. Aggrieved by the same, the assessee is before this court with the present appeal.

6.On 01.06.2023, when the matter was taken up for consideration, this court has granted an order of interim stay, on the premise that the letter dated 19.07.2019 issued by the sixth respondent is nothing but a communication without dealing with the subject in issue. While so, this court has recorded the submissions made by the learned counsel for the appellant/assessee that the opportunity granted for compliance as per the Act could not be availed by the appellant, as the matter was not heard by the learned Judge due to paucity of time and that the name of the counsel on record was wrongly printed in the cause list.

7.Apart from raising the plea by which the interim order has been passed in this writ appeal, the learned counsel for the appellant made the other grounds viz., the respondents have committed manifest arbitrariness by not allowing the appellant to make correction in the form TRAN-1 without any justifiable reason; that the learned Judge has failed to note that the limitation arising from a precedent is not absolute and exhaustive and the plea of limitation by the Government to defeat just claims of citizens should not be countenanced; and that the learned Judge has committed error by applying strict interpretation to a beneficial judgment, which differs from the factual circumstance of the present plea. Ultimately, the learned counsel for the appellant submitted that it would suffice, if the respondent authorities would consider the claim of the appellant, on merits, for which, the learned standing counsel appearing for the respondents has no serious objection.

8.In view of the limited relief now sought by the learned counsel for the appellant, which has not been seriously opposed on the side of the respondent authorities, this court directs the respondents to consider the claim of the appellant on merits and in accordance with law, and pass appropriate orders after affording an opportunity of being heard to the appellant, within a period of eight weeks from the date of receipt of a copy of this judgment.

9.Accordingly, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]

24.07.2023

Neutral Citation : Yes
gya

To

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Union of India
Ministry of Finance
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