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W.P.Nos.18348 of 2020, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2023

Coram

The Hon'ble Mr.Justice **KRISHNAN RAMASAMY**

W.P.Nos.18348, 18353, 19200 and 19205 of 2020

W.M.P.No.23789, 23792, 2273822744 of 2020

M&Arun Tex,
(Rep. By its Proprietor Shri S. Arunkumar).
No 106, Pooluvan Thottam,
Andia Goundanur Village, Udumalai
Tiruppur District-642 154.

... Petitioner in WP. Nos.
18348/2020 & 18353/2020

M/s. Ravi Tex,
(Rep. by its Proprietor Shri. P. Ravichandran)
New No. 1/41, Avalian Thottam,
Thottipalayam, Karavalimadapur,
Sulur TK-641 668.

... Petitioner in W.P. Nos.
19200 & 19205 of 2020

-Vs-

State Tax Officer,
(Inspection - Group - V),
Coimbatore.

... Respondent in W.P. Nos.
18348/2020 & 18353/2020

State Tax Officer,
(Inspection - Group - V).



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Erode Division,
Erode.

... Respondent in W.P. Nos.
19200 & 19205 of 2020

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned orders dated 29.09.2020, 29.09.2020, 30.09.2020 and 30.09.2020 respectively passed by the respondents and quash the same as being arbitrary, illegal and ultra vires the provisions of Section 50 and 74 of the CGST Act/SGST Act.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.T.N.C.Kaushik, AGP (T)
in WP Nos.18348, 19200, 19205,
& 18353 of 2020
Mr.A.G.Satyanarayana for R2
in WP No.19728 of 2020

COMMON ORDER

These Writ Petitions have been filed, challenging the impugned orders dated 29.09.2020, 29.09.2020, 30.09.2020 and 30.09.2020 respectively passed by the respondents and quash the same as being arbitrary, illegal and ultra vires the provisions of Section 50 and 74 of the



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CGST Act/SGST Act.

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2. Since common issue is involved in both the Writ Petitions, these Writ Petitions are taken up together for final disposal.

3. The petitioners in W.P.Nos.19200 and 19205 of 2020 are the trading units engaged in buying and selling of yarn. On 27.02.2020, the officials of the State GST visited the premises of the petitioners and observed that there was no trace of any business activity. It was noticed that the petitioners effected outward and inward supply of cotton yarn from M/s.Sri Karunambikai Mills Pvt.Ltd. (SKMPL) and M/s.Arun Tex during July 2017 to March 2018 and availed input credit under CGST and SGST and utilized for payment of outward liability of GST. Therefore, the respondents concluded that the cotton yarn purchased and sold by the petitioners have not been received in the premises and thereby, issued a show cause notice dated 5.5.2020 under Section 74 of the CGST/SGST Act to the petitioners. Hence, the ITC availed by the petitioners amounting to Rs.2,39,61,474/- and 1,98,90,660/- was



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proposed to be disallowed along with interest and penalty. On 10.09.2020, the petitioners filed a reply to the show cause notice, stating that the purchase and sale made by them were genuine and that appropriate GST returns were filed and the transportation was arranged by the suppliers and payments towards purchase were settled through banking channels. It is alleged that the petitioners bought and sold cotton yarn from SKMPL without movement of goods. Thereafter, the respondent passed impugned orders dated 30.09.2020, stating that the petitioners, SKPL and M/s.Arun Tex have indulged in circular trading without movement of goods with an intention to avail irregular ITC and accordingly, disallowed ITC availed by the petitioners along with interest and penalty. Hence, the Writ Petitions.

4. The petitioners in W.P.Nos.18348 and 18353 of 2020 are the trading units engaged in buying and selling of yarn. On 27.02.2020, the officials of the State GST visited the premises of the petitioners and observed that there was no trace of any business activity. Later, based on the documents furnished by the petitioners, the State Tax Officer alleged



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that the petitioners have not produced any documentary proof for movement of goods from the place of the supplier of goods to the petitioners' premises. Therefore, a show cause notice, dated 28.05.2020 was issued to the petitioners proposing to disallow the input tax credit availed by them to the extent of Rs.2,39,10,954/- and 1,52,02,980/- respectively and their outward liability was assessed to tax with interest and penalty. On 07.09.2020, the petitioners filed a reply to the show cause notice, stating that they were engaged in buying and selling of cotton yarn from M/s.SK MPL and M/s.Ravi Tex and sell the same to them as per the requirements, they filed GST returns upto 2018 and thereafter NIL returns were filed upto 2019. The petitioners also requested to keep the adjudication proceedings on abeyance till the outcome of the proceedings initiated by the department against SK MPL as the petitioners' transactions are interlinked with SK MPL which is under the liquidation process. The petitioners also filed additional reply on 14.09.2020. However, the respondent passed impugned orders dated 29.09.2020, arriving at a conclusion that the petitioners have not produced transport documents for movement of goods and the freight



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charges have not been recorded in the books of accounts and therefore, disallowed the ITC availed amounting to Rs.1,19,55,477/- CGST and Rs.1,19,55,477/- SGST; Rs.76,01,490/- CGST and Rs.76,01,490/- SGST and further assessed the tax liability on the outward supply made by the petitioner and confirmed the tax demand under Section 74 of CGST/SGST Act and the interest quantified upto the date of the order. Hence the Writ Petitions.

5. The learned counsel for the petitioners would contend that for availing ITC, what is relevant is constructive delivery and receipt of goods by the claimant and not physical receipt in premises and once the title over the goods is transferred from the seller to the buyer and the goods are retained at the seller's premises, the seller would be holding the goods on behalf of the buyer and the buyer is deemed to have been in constructive possession of the buyer. Hence, mere absence of goods at the premises of the petitioners, it cannot be construed that there was no trace of business activity and the denial of ITC to the petitioners merely on the basis of the allegation that the petitioners have not proved the



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transport of goods from the suppliers place to the petitioners' place, is contrary to Section 16(2)(d) of the Act. He would further contend that in the absence of invoking provisions of Section 122 of the Act and without putting the petitioners on notice as to which of the penalty prescribed under the said section is proposed to be levied on the petitioners, imposing the penalty under Section 74 of the Act is not permissible and hence, the impugned orders are without authority of law and liable to be set aside.

6. Per contra, the learned Standing counsel for the respondents would submit that during search conducted at the registered premises of the petitioners, it was found that the petitioners have not conducted any business activities and it was concluded that the cotton yarn purchased and sold by the petitioners have not been received in the premises and they had indulged in creation of bogus invoices and availed input tax credit (ITC) and utilized for payment of outward liability of GST. He would fairly submit that only input tax credit alone is disallowed against the person who availed the benefit and in the present case, the benefit was



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availed by SKMPL which is in liquidation and therefore, the penalty and interest alone were fastened against the petitioners. He would point out that after affording sufficient opportunities to the petitioners, detailed orders have been passed by the respondents which requires no interference. However, he would submit that as against the impugned orders, an efficacious remedy by way of appeal is available and the petitioners without exhausting the same, have come forward with the Writ Petitions.

7. I have given my anxious consideration to the submissions made by the learned counsel for the petitioners and the learned Standing counsel for the respondents and perused the materials available on record.

8. It is not in dispute that in the present case, only the input tax credit (ITC) alone was disallowed and the same will not have any impact on the petitioners inasmuch disallowing the input tax credit will affect the beneficiary who availed it and in the present case, M/s.SKMPL in liquidation is the beneficiary and not the petitioners. As against the



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petitioners, penalty and interest were fastened based on the search conducted and the documents seized at the premises of the petitioners, where it was found that the petitioners had indulged in creation of bogus invoices and they had not at all conducted any business activities and it was concluded that the cotton yarn purchased and sold by the petitioners have not been received in the premises. It is not the case of the petitioners that no opportunity was afforded during adjudication of the proceedings and passing the impugned orders. This Court does not find any violation of principles of natural justice and deprivation of any constitutional rights. In such view of the matter, this Court is not inclined to entertain the Writ Petitions.

9. Accordingly, the Writ Petitions are dismissed. However, considering the fact that as against the impugned orders, there is an efficacious appeal remedy available to the petitioners, without adverting to the grounds raised by the petitioners in respect of the impugned orders, this Court grant liberty to the petitioners to prefer appeals before the

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appropriate authority within a period of 30 days from the date of receipt of a copy of this order, without insisting upon the aspect of limitation. Though the learned counsel expressed inability to make payment of pre-deposit for filing the appeal, this Court is not inclined to give any positive direction, leaving it open to the appellate authority to deal with this aspect of pre-deposit in accordance with law, after affording an opportunity to the petitioners. No costs. Consequently, connected WMPs are closed.

Suk

30.10.2023

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