IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29369 of 2023
and
W.M.P.No.29002 of 2023

M/s.Kondamma Trading,
Ground Floor, No.23,
Raghavandra Main Road,
Varasakthi Nagar,
Chennai 600 099.

... Petitioner

Vs.

The Assistant Commissioner of CGST & Central Excise,
Ambattur Division,
Chennai North Commissionerate,
Chennai.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in order-in-original

No.12/2023 (GST-DC) and quash the proceedings dated 29.08.2023 passed therein and further direct the respondent to allow the petitioner to rectify the GST returns filed for the month of November 2018, December 2018, February 2019, April 2019, May 2019 and July 2019.

For Petitioner : Mr.K.Thyagarajan

For Respondent : Ms.R.Hemalatha,
Standing counsel.

ORDER

This writ petition has been filed challenging the impugned order passed by the respondent and to direct the respondent to allow the petitioner to rectify the GST returns filed for the month of November 2018, December 2018, February 2019, April 2019, May 2019 and July 2019.

2. Ms.R.Hemalatha, learned Standing counsel, takes notice on behalf of the respondent.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner would submit that the books of account were audited by the Officers of GST Audit I Commissionerate, Chennai 600 101 for the period from July 2017 to March 2020 during June 2022. On perusal of the said audit report, the respondent had issued a show cause notice dated 22.07.2022 to the petitioner, since the petitioner had availed the IGST credit of a sum of Rs.6,99,220/- instead of CGST and SGST credit on the strength of invoices issued by their suppliers from April 2019 to March 2020. Similarly, the petitioner also availed the CGST credit for a sum of Rs.8,48,773/- and the SGST credit for a sum of Rs. 8,48,773/- instead of IGST credit on the strength of invoices issued by the supplier for the period from April 2019 to March 2020.

5. He would further submit that under these circumstances, the petitioner made a representation to shift the ITC Credit, which was already claimed, from one head to another and the same was simply rejected by the respondent by virtue of the said impugned order.

6. Per contra, the learned counsel for the respondent would submit that the rights available to the petitioner to correct the mistake is by filing a rectification application under Section 161 of the Goods and Services Tax Act (hereinafter called as “GST Act”). However, in the present case, the petitioner had not filed any rectification application. Therefore, the Department had rejected the request of the petitioner and passed the said order.

7. Further he would submit that once the rectification application is filed by the petitioner, a rectification order will be passed by the respondent and if the petitioner had availed the credit under wrong head and the same is genuine, it would be reversed by changing one head to another head. Hence he prays for dismissal of this writ petition.

8. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

9. In view of the above, this Court is not inclined to entertain the present petition. Further, while rejecting this petition, this Court grants liberty to the petitioner to file a rectification application under Section 161 of the GST Act and in such case, this Court directs the respondent to consider the said application on merits and pass appropriate orders to change the credit from one head to another head, within a period of eight weeks from the date of receipt of copy of this order, or otherwise in accordance with law.

10. Accordingly, this writ petition is dismissed with the aforesaid liberty. Consequently, the connected writ miscellaneous petition is also closed.

10.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

KRISHNAN RAMASAMY.J.,
nsa

W.P.No.29369 of 2023
and W.M.P.No.29002 of 2023

10.10.2023
(1/2)