BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 2203 of 2023
and
W.M.P. (MD) No. 1984 of 2023

M/s.Atchaya Agencies,
Rep. By its Proprietrix,
S.Muneeswari. ... Petitioner

Vs.

The Superintendent of CGST & Central Excise,
Aruppukottai Range,
Katcheri Road, Virudhunagar – 626 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in O.C.No. 105/2022 dated 30.11.2022, DIN- 20221159XO0000999D3D, ORDER-IN-ORIGINAL No. 01/2022 GST and quash the same as illegal, against the Provisions of the Goods and Services Tax Acts, 2017 and against the Circulars issued by the Central Board of Indirect Tax and Customs on this issue.

For Petitioner : Mr. A.Chandrasekaran

For Respondent : Mr. R.Nandakumar
Senior Panel Counsel
Assisted by
Ms. S.Ragaventhre
Junior Standing Counsel

ORDER

Heard Mr. A.Chandrasekaran, Learned Counsel for the Petitioner and Mr. R.Nandakumar, Learned Senior Panel Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Order-in-Original No. 01/2022 GST dated 30.11.2022 had assessed liability on the Petitioner for tax in respect of the excess availment of Input Tax Credit (ITC) for the year 2017-2018 and imposed penalty under the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as 'TNGST Act' in short), which is assailed in this Writ Petition.

3. The grievance ventilated by the Petitioner is that the Central Board of Indirect Taxes and Customs, GST Policy Wing, by Circular No. 183/15 /2022-GST, dated 27.12.2022 had issued clarification to deal with difference in Input Tax Credit (ITC) availed in Form GSTR – 3B as compared to that detailed in Form GSTR-2A for the financial years 2017-2018 and 2018-2019, which had not been applied in the impugned order, which was passed prior to that Circular, and in Para 6 of the said Circular, it has been stated as follows:-

> *"6. These instructions will apply only to the ongoing proceedings in scrutiny /audit /investigation, etc., for FY 2017-2018 and 2018-2019 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-2018 and 2018-2019 where any adjudication or appeal proceedings are still pending."*

The claim of the Petitioner is resisted by the Respondent by highlighting from Clause 6 of that circular that the benefit cannot be extended to the Petitioner in this case as it is a completed proceeding.

4. It is, no doubt, true that the said Circular specifically mentions that the instructions therein would apply only to the on-going proceedings for the financial years 2017-2018 and 2018-2019 and not to the completed proceedings, but it had been added that it will apply to those cases, where any adjudication or appeal proceedings are still pending for those financial years. At this juncture, it requires to be pointed that Section 107 of the TNGST Act entitles any person aggrieved by any decision or order passed under that Act by an adjudicating authority to prefer appeal within three months from the date on which the said order has been communicated to them. In the present case, the impugned order has been passed on 30.11.2022 and this Writ Petition had been filed on 24.01.2023, which is within that prescribed time limit. Instead of preferring appeal, the Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution and it is now settled position of law that the availability of an alternative remedy is not an absolute bar to entertain a Writ Petition in all circumstances.

5. Viewed from that perspective, even if this Court refuses to entertain the Writ Petition and relegate the Petitioner to prefer appeal before the concerned authority, it would be empty formality and unnecessarily protract the proceedings. In this peculiar fact situation, it would be appropriate to

meet the ends of justice to set aside the impugned order and remit the matter for fresh determination by the Respondent applying the clarification issued in the Circular No.183/15/2022-GST, dated 27.12.2022 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing.

6. The result of the foregoing discussion is that the Writ Petition is disposed on the following terms:-

(i) the impugned order in O.C. No. 105/2022 dated 30.11.2022 by the Respondent is set aside and the proceedings shall stand restored on the file of the Respondent for fresh determination applying the clarification issued in the Circular No.183/15/2022-GST, dated 27.12.2022 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing;

(ii) the Respondent shall list the matter next hearing on 12.07.2023 for conducting enquiry and if he is not able to then take up the matter, the date to which it is adjourned shall be informed to the Petitioner under written aknowledgment;

(iii) if it is found that any other details or supporting documents is necessary, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 15 days for the same;

(iv) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and all other persons concerned to explain their position in that regard; and

(v) a reasoned order shall be passed dealing with each of the contentions raised, uninhibited and uninfluenced by the earlier order passed in the matter, on merits and in accordance with law and the decision taken communicated under written acknowledgment;

(vi) consequently, connected Miscellaneous Petition is closed.

(vii) there is no order as to costs.

03.02.2023

Index : Yes/No
NCC : Yes/No
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Note: Issue order copy by 23.06.2023.

To

The Superintendent of CGST & Central Excise,
Aruppukottai Range,
Katcheri Road, Virudhunagar – 626 001.

Copy to

Proprietix, S.Muneeswari,
M/s. Atchaya Agencies,
No. 7-8J-4, Railway Feeder Road,
Azeez Nagar, Aruppukottai - 626 101.

P.D.AUDIKESAVALU,J.

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