IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(110) **CWP-26339-2023**
Decided on : 23.11.2023

M/s Kool Tech Infra & Logistics

……Petitioner(s)

Versus

Union of India & others

……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Sandeep Goyal, Advocate
Mr.Rishab Singla, Advocate
Mr.Gaurav Sharma, Advocate, for the petitioner (s).

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G.S. Sandhawalia, J. (Oral)

1. Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India is to the notice dated 20.04.2022 (Annexure P-7) passed by respondent No.6 wherein on account of having closing balance of Rs.50,39,347/- as Cenvat credit returns for the quarter ending June, 2017, the said notice had been issued on the ground that the petitioner was not eligible to take credit of the duty on inputs or tax on input services.

2. The argument which has been raised by counsel for the petitioner is that the earlier notice dated 06.04.2022 (Annexure P-6) had been issued on the same cause of action under the Central Excise Tariff Act, 1955 as to why the said Cenvat credit should not be disallowed which led to passing of the order dated 30.08.2023 (Annexure P-10) which is now subject matter of appeal filed on 31.10.2023 (Annexure P-11). It is in such circumstances, the jurisdiction of the Writ Court has been invoked.

3. A perusal of Section 74 of the Central GST Act, 2017 (for short, the 'Act') would go on to show that under Sub-clause (9), a representation can be filed and if made by the person on whom the notice had been issued under Section 74(1) of the Act, thereafter, an order has to be passed. Apparently, the petitioner has not approached the concerned authority by filing the said representation though a notice had already been issued on 20.04.2022 whereas on a similar demand notice issued under the Act, the same had been duly replied.

4. In such circumstances, we are of the considered opinion that firstly before availing the extraordinary writ jurisdiction of this Court, it would be appropriate if the petitioner files a representation before the concerned authority(s) so that an order can be passed taking into contention the objections the petitioner seek to raise in the present writ petition.

5. Accordingly the present writ petition is disposed of with the above-said liberty. Needless to say that we have not commented upon the merits of the case and neither adjudicated on the vires of the provisions of the Act which are also subject matter of challenge, at this stage. It would be open to the petitioner to thereafter challenge the order, if any adverse findings are recorded against it.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

23.11.2023
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No