IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 320 of 2024
and
C.M.P. No. 1966 of 2024

Tvl. Helini Biomolecules
Rep. by its Proprietor
Plot No.26, Ohmlina, 2nd Avenue
Khuthubi Complex
7th Cross Street
Vettuvankeni, Chennai 600 115 .. Appellant

Versus

State Tax Officer (ST) (FAC)
Sholinganallur Assessment Circle
Integrated Registration and Commercial Taxes Building
Nandanam, Chennai 600 035 .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 30.10.2023 passed by the learned Judge in W.P. No. 30469 of 2023

For Appellant	:	Mr. Adithya Reddy
For Respondent	:	Mr. M. Venkateswaran Special Government Pleader (Taxes)

JUDGMENT

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

Challenging the order dated 30.10.2023 passed by the learned Judge in writ petition No. 30469 of 2023, this intra-court appeal is filed by the appellant / assessee.

2. The appellant has filed the aforesaid Writ Petition praying to quash the assessment order dated 22.08.2023 passed by the respondent.

3. According to the appellant, they are a registered dealer under the Goods and Services Tax (GST) Act and were allotted GSTIN No.33APHPS9353NZ5. They are engaged in manufacture of diagnostic and laboratory reagents; laboratory chemicals; machinery, plant and laboratory equipment. It is also stated that they are diligently paying the taxes and other statutory dues regularly. While so, a notice dated 23.05.2023 relating to assessment year 2021-2022 was issued to the appellant intimating that they had transaction with a non-existing entity called Himalaya Enterprises and therefore, the Input Tax Credit (ITC) availed by them has to be reversed. The appellant submitted their reply on 25.05.2023 specifically stating that the transactions they made with M/s. Himalaya Enterprises are genuine. However,

in order to avoid any further litigation with the department, they consented for reversing the ITC, which they have not availed so far. To prove that the ITC credited to their account has not been availed by them, the credit ledger has been produced. Therefore, the appellant requested the respondent not to levy any further interest in furtherance to the notice dated 23.05.2023 inasmuch as the ITC credited to their account has not been withdrawn. However, the respondent issued a show cause notice dated 31.05.2023 calling upon the appellant to explain as to why interest under Section 50 of the Central Goods and Services Act, 2017 be not levied. The appellant replied to the show cause notice on 30.06.2023. However, being dissatisfied with the explanation offered, the respondent passed the assessment order dated 22.08.2023. Challenging the same, the aforesaid Writ Petition came to be filed by the appellant. By order dated 30.10.2023, the learned Judge dismissed the writ petition, with the following observation:

> *"9.Accordingly, this court is not inclined to entertain this writ petition. Further, it is made clear that if the petitioner have any grievance with regard to the said assessment order, they can approach the appropriate forum where the alternate remedy is available for them."*

Aggrieved by the same, the appellant / writ petitioner is before this court with the present appeal.

4. The learned counsel appearing for the appellant, after making some arguments, submitted that the appellant is inclined to approach the appellate authority by filing statutory appeal as against the assessment order passed by the assessing authority.

5. In view of the above, this writ appeal stands disposed of, granting two weeks time from the date of receipt of a copy of this judgment, to the appellant to approach the appellate authority for filing appeal along with stay application. On such approach, the appellate authority shall entertain the same, without raising any issue relating to limitation, consider and pass appropriate orders, on merits and in accordance with law, in the stay application within a period of two weeks thereafter. Till such time, the recovery proceedings, if any, initiated against the appellant, shall be kept in abeyance. Thereafter, the appellate authority shall consider the appeal and pass appropriate orders, on merits and in accordance with law, after affording reasonable opportunity to both sides, as expeditiously as possible. No costs. Connected miscellaneous petition is closed.

[R.M.D,J] **[M.S.Q, J]**
14.02.2024

Internet : Yes
Neutral Citation : Yes/No
gya/rsh

To

The State Tax Officer (ST) (FAC)
Sholinganallur Assessment Circle
Integrated Registration and
Commercial Taxes Building
Nandanam, Chennai 600 035

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

gya

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