IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7182 of 2024 and
W.M.P.No.8030 of 2024

Resulticks Digitals India Pvt. Ltd.,
Represented by its Authorised Signatory,
Mr.Ramesh V.
6th floor, No.37, PM Tower,
Greams Road, Mount Road,
Chennai-600 006. ...Petitioner

Vs.

1. Additional Commissioner,
Office of Commissioner of CGST and Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai-600 034.

2. Additional Commissioner,
Office of Commissioner of CGST and Central Excise,
Audit-I Commissionerate,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna nagar, Western Extension,
Chennai-600 101. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to impugned order in original No.109/2023-CH.N (ADC) dated 15.12.2023 passed by the 1st respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran
for M/s.Lakshmi Kumaran and Sridharan Attorneys

For Respondents : Mr.Ramesh Kutty,
Senior Standing Counsel,

ORDER

An order in original dated 15.12.2023 is challenged in this writ petition. Pursuant to show cause notice dated 08.08.2023, the petitioner replied on 26.10.2023. The order impugned herein was issued thereafter on 15.12.2023.

2. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that such order deals with three issues. The first issue that he dealt with pertains to short payment of GST on import of services from a subsidiary company. On this issue, learned counsel relied on the second proviso to Rule 28 of the Central Goods and Services Tax Rules, 2017 (the CGST Rules) to contend that it is open to the recipient of service, who is eligible for full Input Tax Credit (ITC), to issue an invoice in respect thereof and that such invoice value shall be deemed to the open market value of the goods or services. In spite of

raising this contention before the respondents, he points out that the impugned order is incomplete and that no findings were recorded as to why such contention was rejected. The second aspect dealt with by him pertains to non payment of GST on turnover from export of services. As regards this issue, he pointed out that the export invoice of the petitioner was raised in US dollars. He also pointed out that the credit advice shows that the amount was remitted by the recipient of services in US dollars from the Indian Overseas Bank, Singapore, and that the same was credited into the petitioner's account in INR. In spite of providing the above evidence, he submits that it was wrongly concluded that the amount was not remitted in foreign currency into India. The third issue dealt with by him pertains to an alleged mismatch between the GSTR 1 and 3B. On this issue, he submits that the mismatch occurred on account of invoices which were cancelled because services were not provided.

3. Mr.Ramesh Kutty, learned senior standing counsel, countered these submissions. As regards the reliance on the second proviso to Rule 28 of the CGST Rules, he contends that such invoice should be of the same value as the commercial invoice raised by the supplier of services. He further submits that the application of the second proviso to Rule 28 is

contingent on findings that the petitioner is eligible for full ITC. Since factual determinations are necessary in this regard, he contends that the petitioner should approach the appellate authority. With regard to the non payment of GST on turnover from export of services, learned senior standing counsel contends that the services should be paid for through an authorised dealer. In the absence of sufficient evidence in such regard, he contends that no interference is warranted with the impugned order. As regards the third issue, he submits that the petitioner should have issued a credit note for the value of services not provided. Since this was done, he contends that there is no infirmity in the order.

4. On examining the impugned order, as regards the first issue, the respondents noticed that the petitioner relied on the second proviso to Rule 28 of the CGST Rules. After noticing the said contention, the respondents failed to record any reasons for rejecting the contention. Indeed, it appears that the order is incomplete on this issue. As regards non payment of GST on turnover from export of services, the documents placed on record by the petitioner, such as the export invoices and the credit advice appear to indicate *prima facie* that the invoice was raised in US dollars; payment was also remitted into India in foreign currency; and

thereafter converted into INR. This observation is, however, tentative and not intended to be binding on the respondents. As regards the third issue, the petitioner has pointed out that no revenue loss was caused by adopting the procedure of cancelling the invoice instead of raising the credit note in respect of services not provided.

5. Since all these issues have not been duly considered in the order impugned herein, it is just and necessary that the 1st respondent reconsiders the matter after providing a reasonable opportunity to the petitioner. At the same time, it should be recognised that the petitioner has approached this Court instead of approaching the appellate authority by remitting 10% of the disputed tax demand. In the over all facts and circumstances, it is also necessary to safeguard revenue interest to an extent.

6. On instructions, learned counsel for the petitioner agrees to remit a sum of Rs.20,00,000/- as a condition for remand.

7. For reasons set out above, the impugned order is set aside and

the matter is remanded for reconsideration subject to the condition that the petitioner remits a sum of Rs.20,00,000/- (Rupees Twenty lakhs only) as agreed to within a maximum period of four weeks from the date of receipt of a copy of this order. Upon being satisfied that the above mentioned amount was received, the 1st respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of two months from the date of payment of the above mentioned amount by the petitioner.

8. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

16.04.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

kj

To

1. Additional Commissioner,
Office of Commissioner of CGST and Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai-600 034.

2. Additional Commissioner,
Office of Commissioner of CGST and Central Excise,
Audit-I Commissionerate,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna nagar, Western Extension,
Chennai-600 101.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

W.P.No.7182 of 2024 and
W.M.P.No.8030 of 2024

16.04.2024