IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9574 of 2024 and
W.M.P.Nos.10591 & 10592 of 2024

M/s.APL Apollo Tubes Limited (Unit II),
Represented by its Vice President (Legal & Taxation),
Shri. Rajeev Kothari,
No.332-338, Alur Village Road,
Hosur – 635 109. ...Petitioner

Vs.

1. State Tax Officer (Intelligence),
Inspection – Group II,
Commercial Tax Buildings,
Perandapalli,
Hosur-635 109.

2.State Tax Officer (Intelligence),
Inspection Cell-I,
Salem-636 007. ... 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 passing of the impugned order bearing Ref. No.GST INS-01/184/2022-

2023 dated 06.03.2024 for the year 2020-2021 passed by the 1st respondent and quash the same as the same being arbitrary, passed in violation of the principles of natural justice, biased and the 1st respondent lacks the jurisdiction to pass the impugned order.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.T.N.C.Kaushik,
Additional Government Pleader (T)

ORDER

An order in original dated 06.03.2024 is challenged insofar as it pertains to three issues. The petitioner is engaged in the manufacture and supply of tubes and pipes of iron and steel. Pursuant to show cause notice dated 30.06.2023, the petitioner replied on 03.11.2023. The order impugned herein was issued thereafter on 06.03.2024.

2. Learned counsel for the petitioner pointed out that the first issue relates to the issuance of credit notes by the supplier. As regards this issue, he submitted that arguments were advanced in course of W.P.No.8898 of 2024 and that the matter was remanded to the assessing

officer based on such contentions. He next dealt with the Input Tax Credit (ITC) availed of by the petitioner with regard to items detailed in the tables at pages 57 & 58 of the typed set. By further contending that none of these items fall within the scope of sub-section (5) of Section 17 of applicable GST enactments, learned counsel submitted that the impugned order sets out no reasons for concluding that ITC cannot be availed in respect of these items under Section 17(5).

3. He further submits that reverse charge on legal services availed of by the petitioner were paid, whereas tax was imposed on items not covered under the reverse charge mechanism. For all these reasons, he submits that the impugned order calls for interference.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. As regards the disallowance of ITC on the basis that the items indicated in the tables do not qualify for ITC, he contended that the fact that the petitioner was not eligible for ITC is evident from the details set out in the impugned order in the form of tables.

5. With regard to the issue relating to the issuance of credit notes, in W.P.No.8898 of 2024, the impugned order was set aside and the matter was remanded for re-consideration upon considering the submissions of learned counsel for the petitioner to the effect that lower ITC was availed of in the subsequent months and that no revenue loss was occasioned as a result. The same reasons hold good in this writ petition also. As regards legal and professional charges, the petitioner stated that GST is payable on forward charge basis for professional and consultant charges. The petitioner also stated that tax liability was duly discharged by the supplier. With regard to legal services, the petitioner stated that tax was paid on reverse charge basis and enclosed both a Chartered Accountant's certificate and sample invoices. In those circumstances, reconsideration of the finding that the remaining turnover of Rs.5,04,793/- is not covered by documents is warranted.

6. The last issue that falls for consideration relates to the denial of ITC with regard to certain inputs described in the tables at pages 57 & 58 of the typed set. In relation thereto, the following finding was recorded:

> *"I have carefully perused the reply sample invoice filed by the tax payer for*

availed ineligible ITC U/s 17(5). On verification documents filed by the tax payer and GSTR 2A it is found that the tax payer's have availed Input Tax Credit which are blocked credit U/s 17(5) not being for furtherance of business. Hence ITC is disallowed as not eligible.

CGST Tax due	*: Rs.2,68,430/-*
SGST Tax due	*: Rs.2,68,430/-*
Total Tax due	*: Rs.5,36,860/-*

The Taxpayer instructed to pay the tax and Penalty under section 74, and also interest under section 50 of the TNGST Act, 2017."

7. Except for holding that the tax payer had availed ITC which is blocked credit under Section 17(5), no reasons are specified as to why such ITC was denied.

8. In these circumstances, the impugned order calls for interference with regard to the three issues discussed above. Consequently, the impugned order is set aside in relation to these three issues and remanded for re-consideration. The first respondent is directed to provide a

reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within *two months* from the date of receipt of a copy of this order. For the avoidance of doubt, it is made clear that the observations set out in this order are not intended to be binding on the first respondent while undertaking re-consideration.

9. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

10.04.2024

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

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To

1.State Tax Officer (Intelligence)
Inspection - Group II
Commercial Tax Buildings
Perandapalli, Hosur 635 109.

2.State Tax Officer (Intelligence)
Inspection Cell-1
Salem 636 007.

SENTHILKUMAR RAMAMOORTHY,J

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