IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2024

CORAM :

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.11791 of 2022

M/s.Kavi Epc Pvt. Ltd.
Rep. By its Director Saravanan K
Door No.17, Old No.127/72
7th Street, Poombuhar Nagar
Kolathur, Chennai – 600 099. .. Petitioner

Vs.

The Assistant Commissioner (ST)
Adjudication, Intelligence – I
Greams Road, Chennai – 600 006. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, to call for the records of the respondent in GST MOV – 09 vide order No.412/2021-22/ADJ dated 02.03.2022 and quash the same and consequently direct the respondent to refund Rs.5,02,956/-.

For the Petitioner : Mr.M.Hariharan

For the Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The petitioner is before this Court against the order dated 02.03.2022 made in GST MOV – 09 vide order No.412/2021-22/ADJ, whereby, the respondent has imposed a penalty of Rs.5,02,956/- under Section 129 (1)(a) of the respective GST enactment.

2.1. The petitioner is engaged in construction activities and intended to have consignments converted into necessary structural items for the purpose of carrying out construction activities. The background of the case is that the petitioner has placed purchase of consignments at M/s.M.R.Industrial Services for supply of certain goods to the following address, namely, M/s.Kavi Epc Pvt. Ltd., No.6, Lakshmi Priya Garden, Chettipedu Kuthambakkam Village, Poonamallee Taluk, Pin Code – 600 124. It is the case of the petitioner that the supplier / consignor, namely, M/s.M.R.Industrial Services, by mistake, had given the name of the petitioner with the above address as 'consignee', but the consignee was the petitioner's work contractor namely, M/s.Athish Engineering Systems.

2.2. It is submitted that the petitioner has replied to the notices dated 25.02.2022 in Form GST Mov - 01, 02, 06 and 07, however, without considering the same, huge penalty of Rs.5,02,956/- has been imposed upon the petitioner.

3.1. Defending the impugned order, the learned Additional Government Pleader appearing for the respondent would submit that the petitioner has paid the amount of penalty and has taken delivery of the consignment that was detained vide the Order of Detention in Form GST MOV – 06 dated 25.02.2022, pursuant to which, the Release Order dated 02.03.2022 in Form GST MOV – 05 was issued. Therefore, in terms of Section 129 (5) of the respective GST enactment, the issue is said to has attained finality.

3.2. It is further submitted that the writ petition is not maintainable as the petitioner ought to have worked out its remedy under Section 107 of the respective GST enactment by filing an appeal before the Appellate Authority. It is therefore submitted that since the petitioner has failed to file a statutory appeal, the writ petition is liable to be dismissed.

4. This Court has considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and has also perused the documents filed by the petitioner, including the GST registration of the said M/s.Athish Engineering Systems.

5.1. The GST registration, as per the extract from the GST portal, and the invoice raised by the consignor / seller, namely, M/s.M.R.Industrial Services, are one and the same. The e-Way Bill also indicates the same, except that the name of the consignee has been given as that of the petitioner.

5.2. This Court has, in several cases, come to the rescue of the assessee, where, errors are marginal and were not major or motivated with a view to evade tax. Since, the address of the consignee, namely, M/s.Athish Engineering Systems, as in the GST Registration certificate and the address in the tax invoice dated 25.02.2022 raised on the petitioner by the seller / consignor, namely, M/s.M.R.Industrial Services, are one and the same, minor discrepancy in the name can be condoned. However, this would require a proper determination by the respondent, although the petitioner has paid the penalty amount and has taken delivery of the consignment that was detained by the respondent

5.3. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass fresh orders on merits. The penalty paid by the petitioner, with a view to take delivery of the detained consignments may be refunded and shall be subject to the final outcome of the order that may be passed.

6. The writ petition, accordingly, stands allowed. There shall be no order as to costs. Consequently, W.M.P.No.11243 of 2022 is closed.

06.12.2024

Index : Yes/No

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To

1. The Assistant Commissioner (ST)

Adjudication, Intelligence – I
Greams Road, Chennai – 600 006.

C.SARAVANAN,J.

(drm)

W.P.No.11791 of 2022

06.12.2024