IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15517 of 2022
and
W.M.P.Nos.14686, 14687 and 14688 of 2022

AVTEC Limited,
Authorized Signatory,
Mr.Pawan Kumar Pandey ... Petitioner

Vs.

1.The Deputy Commissioner of GST & Central Excise,
Hosur-1 Division, Thally Road,
Hosur – 635 109.

2.The Superintendent of Central Tax & GST,
Mathigiri Range, Hosur Division,
Thally Road, Hosur.

3.ICICI Bank Limited,
ASL Plaza, By-pass Road,
Opposite Hosur Bus Stand,
Hosur – 635 109. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records leading to the issuance of the GST ASMT-10 bearing Reference DIN:20220259XP000000A285 dated 17.02.2021 and consequential recovery notice in FORM GST DRC-13 in

Demand No.42/2022 dated 11.03.2022 by the first respondent herein, and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.T.Ramesh Kutty
Senior Standing Counsel
and Mr.B.Sivaraman
Junior Panel Counsel

ORDER

This Writ Petition is of the year 2022.

2. The petitioner has challenged the notice in Form GST ASMT-10 bearing Reference DIN:20220259XP000000A285 dated 17.02.2021 and consequential recovery notice in FORM GST DRC-13 in Demand No.42/2022 dated 11.03.2022 issued by the first respondent.

3. The petitioner is an assessee with the respondents, had filed belated returns for the initial period.

4. It is the specific case of the petitioner that although the petitioner had failed to file the returns in time as is contemplated under Section 39 of the Central Goods and Services Tax (CGST) Act, 2017, regular returns under

Chapter VIII of the Central Goods and Services Tax (CGST) Act, 2017/Chapter IX of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017, the petitioner had calculated the tax payable for each of the months and deposited the amounts in the petitioner's Electronic Cash Ledger/Electronic Cash Register.

5. Thus, according to the petitioner, the tax was paid to the Department. Merely adjustment of credit was required by debiting the same for discharging the tax liability for the period in dispute.

6. It is submitted that subsequently the petitioner has also filed the returns although belatedly on payment of necessary charges as is contemplated under the respective Acts. However, the respondents proceeded to issue a recovery notice dated 14.02.2020 and thereafter issued the recovery notice and have recovered the amounts from the petitioner. Meanwhile, the petitioner had challenged the recovery notice dated 14.02.2020 followed by the second recovery notice dated 15.02.2021 which was challenged in W.P.No.7072 of 2021. The said writ petition was disposed on 28.03.2022 with the following observations:-

"5. I have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

6. Whatever be the effect of the order i.e., the demand of interest, the same since have a civil consequence on the petitioner, it should have been preceded by a notice to be issued, which admittedly since has not been issued and no opportunity has been given to the petitioner before passing the impugned order, I am of the view that, the impugned order cannot be sustained in the eye of the law, accordingly, it is liable to be set aside. In the result, the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, after issuing a notice to the petitioner and by giving an opportunity of being heard, the respondent/Revenue can pass an order with regard to the alleged demand of interest for the delay in payment of tax. The needful shall be undertaken at the earliest with the cooperation of the petitioner/assessee.

7. Accordingly, this Writ Petition is ordered. No costs. Consequently, connected miscellaneous petition is closed."

7. Learned counsel for the petitioner submits that there is no justification in recovering interest as the amounts have already been deposited in time for the respective months in the Electronic Cash Ledger/Electronic Cash Register of the petitioner.

8. On the other hand, learned Senior Standing Counsel for the respondents would submit that the Writ Petition has become infructuous.

9. It is submitted that prior to the order passed by this Court on 28.03.2022 in W.P.No.7072 of 2021, the impugned notice in Form GST ASMT-10 was issued on 17.02.2021, which has been replied by the petitioner on various dates i.e., on 22.02.2021, 04.03.2021 and 04.02.2022 which was thereafter followed in the recovery notice in Form GST DRC-13 issued to the petitioner's Banker on 11.03.2022.

10. In my view, the relief sought for in this writ petition is without any basis. The petitioner ought to have filed a writ petition for a mandamus to direct the respondents to adjudicate the issue as to whether the petitioner indeed liable to interest under Section 50 of the Central Goods and Services Tax (CGST) Act, 2017/Tamil Nadu Goods and Services Tax (TNGST) Act, 2017.

11. Under these circumstances, this writ petition is disposed of by directing the respondents to pass a fresh order on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order, justifying their stand as to how the interest is payable particularly when the amounts were credited to the accounts of the Government in the petitioner's Electronic Cash Ledger/Electronic Cash Register.

12. Needless to state, before passing such order, the petitioner shall be heard.

13. The amount that was recovered towards interest will be subject to final outcome of the writ petition.

14. This Writ Petition is disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petitions are closed.

25.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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C.SARAVANAN, J.

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