IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15024 of 2024
and WMP Nos.16324 and 16325 of 2024

Contemporary Leather Private Limited,
Rep by its Managing Director,
R.Sriram, No.2/400, Mount Poonamallee High Road,
Iyyapanthangal, Chennai 600 056. ..Petitioner

Vs.

Assistant Commissioner (ST)
Poonamallee Assessment Circle,
No.4/109, Third Floor,
Varadharapuram, Nazarethpet,
Chennai 600 123. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari to call for the impugned order of the respondent passed in GSTIN:33AADCC0948F1Z1/2017-18 dated 31.12.2023 and quash the same.

For Petitioner : Mr.N.Murali

For Respondent : Mr.V.Prasanth Kiran
Government Advocate (T)

ORDER

An order in original dated 31.12.2023 is assailed on the ground that sufficient opportunity was not provided to the petitioner to contest the tax proposal on merits. Proceedings were initiated against the petitioner by issuing show cause notice dated 30.09.2023. By such show cause notice, the petitioner was called upon to show cause as to why tax liability should not be imposed in respect of the mismatch between the petitioner's GSTR 3B return and the auto populated GSTR 2A. The impugned order was issued thereafter on 31.12.2023.

2. Learned counsel for the petitioner submits that GSTR-2A was notified by circular dated 11.11.2019, and is therefore inapplicable in respect of financial year 2017-2018. In spite of bringing this to the notice of the Assessing Officer by reply dated 11.12.2023, he submits that the tax proposal was confirmed. He further submits that the petitioner is in a position to establish that only eligible ITC was claimed if provided an opportunity. On instructions, he submits that the petitioner agrees to remit

15% of the disputed tax demand as a condition for remand.

3. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing a show cause notice dated 30.09.2023 and personal hearing notices dated 03.11.2023 and 05.12.2023. He further submits that the burden of proof is on the tax payer to establish that only eligible ITC was availed of as per Section 16 and Section 155 of applicable GST enactments.

4. The petitioner's reply dated 11.12.2023 is on record. Apart from referring to circular No.183 and pointing out that GSTR 2A was notified by circular issued on 11.11.2019, no other documents were enclosed with such reply. The tax proposal was confirmed in such circumstances. Since learned counsel for the petitioner submits that the petitioner is in a position to establish that only eligible ITC was claimed, the interest of justice warrants that another opportunity be provided to the petitioner by putting the petitioner on terms.

5. For reasons set out above, impugned order dated 31.12.2023 is set aside on condition that the petitioner remits 15% of the disputed tax demand within three weeks from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit additional documents, if any. Upon receipt of such additional documents and subject to being satisfied that 15% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of three months from the date of receipt of the additional documents from the petitioner. On account of the assessment order being set aside, the bank attachment is raised.

6. The Writ Petition is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are closed.

18.06.2024

jv

Index:Yes/No
Internet:Yes/No
Speaking order/Non Speaking order
Neutral Citation: Yes/No

To:-

The Assistant Commissioner (ST)
Poonamallee Assessment Circle,
No.4/109, Third Floor,
Varadharapuram, Nazarethpet,
Chennai 600 123.

SENTHILKUMAR RAMAMOORTHY, J.

jv

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