



WEB COPY



W.P.No.18064 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **31.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18064 of 2024
and W.M.P.Nos.19845 & 19847 of 2024

M/s.Good Leather Shoes Private Limited,
Represented by its Managing Director
K.R.Vijayan, No.18, Third floor,
Railway Colony First Street,
Aminjikarai, Chennai-600 029.

... Petitioner

-VS-

The Deputy Commissioner of GST & Central Excise,
Chennai North Commissionerate,
Purasaiwalkam Division, First floor,
Newry Towers,
2054-I, Anna Nagar, Chennai-600 040.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the Respondent in his Order in Original No. 228/2022 dated 22.11.2022 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan



WEB COPY



W.P.No.18064 of 2024

For Respondent : Mr.A.P.Srinivas, Senior Standing Counsel

ORDER

An order in original dated 22.11.2022 is assailed in this writ petition in so far as penalty was imposed without taking into consideration the amounts remitted by the petitioner earlier. Upon receipt of show cause notice dated 17.12.2021, the petitioner submitted reply dated 21.02.2022. By such reply, the petitioner stated that the ineligible Input Tax Credit (ITC) was reversed and that the proceedings may be dropped on that account. The impugned order in original was issued in these facts and circumstances. The petitioner carried the matter in appeal to the first appellate authority. Such appeal was rejected on 23.05.2023 on the ground of limitation.

2. Learned counsel for the petitioner referred to the impugned order and pointed out that penalty was imposed in spite of noticing that the petitioner had discharged the liability even prior to the issuance of the show cause notice. Learned counsel also points out that the order records that amounts remitted by the petitioner through its GSTR 3B returns in 2017 & 2018 were being appropriated. In those circumstances, learned counsel



W.P.No.18064 of 2024

contends that 10% of such amounts could not have been imposed as penalty as per sub-section (9) of Section 73 of applicable GST enactments.

Therefore, he submits that the matter requires reconsideration only in so far as penalty is concerned.

3. Mr.A.P.Srinivas, learned senior standing counsel, appears on behalf of the respondent. He submits that the petitioner's reply was considered before issuing the impugned order. He also submits that the petitioner lodged a statutory appeal against the order. In these circumstances, he submits that no interference is warranted.

4. On perusal of the impugned order, it is evident that the petitioner had remitted a sum of Rs.59,05,950/- towards ineligible ITC in respect of IGST and a further sum of Rs.44,62,969/- towards ineligible ITC in respect of CGST. Such remittances were made in 2017 and 2018, which is prior to the issuance of the show cause notice. Learned counsel for the petitioner contends that 10% of such amounts should have been imposed as a penalty in those circumstances and that such imposition contravenes sub-section (9)



W.P.No.18064 of 2024

of Section 73 and the newly introducing Section 128A of applicable GST enactments. These facts and circumstances justify reconsideration only in so far as imposition of penalty is concerned.

5. For reasons aforesaid, the impugned order dated 22.11.2022 is set aside only in so far as the imposition of penalty is concerned. Consequently, the matter is remanded to the respondent for the limited purpose indicated above and after providing a reasonable opportunity to the petitioner, including a personal hearing, a fresh order shall be issued in respect of penalty within a period of three months from the date of receipt of a copy of this order.

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

31.07.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

kj

To

4/6



W.P.No.18064 of 2024

The Deputy Commissioner of GST & Central Excise,
Chennai North Commissionerate,
Purasaiwalkam Division, First floor,
Newry Towers,
2054-I, Anna Nagar, Chennai-600 040.



WEB COPY



W.P.No.18064 of 2024

SENTHILKUMAR RAMAMOORTHY,J

kj

W.P.No.18064 of 2024
and W.M.P.Nos.19845 & 19847 of 2024

31.07.2024