IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16889 of 2024
and
W.M.P.No.18576 of 2024

Itares Shoes Private Limited,
Rep. by its Director Mr. B. Mohammed Ifthikar. ... Petitioner

Versus

1.The Additional Commissioner,
Office of the Principal Commissioner of CGST & Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai – 34.

2.The Deputy Commissioner,
Thiru Vika Nagar Division,
Chennai North Commissionerate,
Newry Towers, 1st Floor, Plot No.2054-I,
12th Main Road, II Avenue, Anna Nagar,
Chennai – 40.

3.The Superintendent of Central Taxes,
Range V, Thiru Vika Nagar Division,
Chennai North Commissionerate,
Newry Towers, 1st Floor, Plot No.2054-I,
12th Main Road, II Avenue, Anna Nagar,
Chennai – 40. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of

India pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents and quash the Order-in-Original No.49/2024-GST CH.N(ADC) dated 28.03.2024 bearing DIN: 2024359TK0000320229 issued by first respondent and consequently direct the first respondent to provide a fresh opportunity to the petitioner to respond to the DRC-01 show cause notice No.11/2024 GST CH.N (ADC) dated 29.01.2024 bearing DIN: 20240159TK000000A07D issued by 1st respondent and pass such further or other orders as may deem fit and proper in the circumstances of this case.

For Petitioner : Mr. V. Ravindran

For Respondents : Mr. Rajinish Pathiyil,
Senior Standing Counsel.

ORDER

An order in original dated 28.03.2024 is subject to challenge in this writ petition. The petitioner received a demand letter dated 21.12.2023 with regard to the disparity between the e-way bills reflected in the e-way bill portal and the petitioner's GSTR 3B returns for assessment periods running from 2018-19 to 2020-21.

2. The petitioner submitted a reply dated 10.01.2024. Being

dissatisfied with such reply, a show cause notice dated 29.01.2024 was issued. The petitioner replied thereto on 27.02.2024. By asserting that the impugned order was dispatched to the petitioner and served only on 24.04.2024, the petitioner submitted additional replies on 15.04.2024 and 16.04.2024. The present writ petition was filed in the said facts and circumstances.

3. Learned counsel for the petitioner submits that the petitioner was called upon to show cause with regard to the mismatch between the value of e-way bills generated on the e-way bill portal and returns filed by the petitioner in Form GSTR 3B. By reply dated 27.02.2024, the petitioner explained that e-way bills were raised under several categories, including categories where there was no taxable supply. Consequently, the petitioner stated that there would be a mismatch between the data reflected in the e-way bill portal and the petitioner's GSTR 3B returns.

4. Learned counsel refers to the subsequent letters dated 15.04.2024 & 16.04.2024 and points out that all relevant outward and inward delivery challans and outward and inward e-way bill reports were annexed to the reply dated 16.04.2024. By referring to the impugned order, learned

counsel submits that the petitioner was not provided an opportunity to show cause in respect of the returns filed in Form ITC -04. If such opportunity had been provided, he contends that the petitioner would have been able to establish that the requirement of filing Form ITC-04 was not applicable for the period running from July 2017 to March 2019 in terms of Notification No.38/2019 -Central Tax dated 31.08.2019. Without prejudice to these contentions, learned counsel for the petitioner submits that the petitioner agrees to remit a sum of Rs.3,00,50,000/- (Rupees Three crore and Fifty lakhs only) towards the disputed tax demand, if a reasonable time is provided to make such payment.

5. Mr.Rajinish Pathiyil, learned senior standing counsel, accepts notice for the respondents. He submits that the petitioner was provided a reasonable opportunity to show cause. He also submits that the petitioner's reply dated 27.04.2024 was duly taken into consideration in the impugned order. As regards replies dated 15.04.2024 & 16.04.2024, he submits that these replies are subsequent to the impugned order.

6. On perusal of the show cause notice, it is clear that the petitioner was called upon to show cause with regard to the disparity between the data reflected in the e-way bills portal and the outward supply value

reflected in the petitioner's GSTR 3B returns. By reply dated 27.02.2024, the petitioner stated that such disparity is on account of the non-taxable supplies reflected in the e-way bills portal. It also appears that supporting documents were not annexed to the reply dated 27.02.2024. Such supporting documents were, however, annexed to the reply dated 16.04.2024, which is subsequent to the order. In the show cause notice, the respondent did not refer to the returns filed by the petitioner in Form ITC -04, whereas, such returns were the basis for confirming the tax proposal to the extent specified therein. Since the petitioner was put on notice with regard to larger issue of mismatch, the petitioner could have provided a comprehensive explanation. Therefore, it is necessary to put the petitioner on terms.

7. For reasons aforesaid, the impugned order dated 28.03.2024 is set aside on condition that the petitioner remits a sum of Rs.3,50,00,000/- (Rupees Three crore and Fifty lakhs only) towards the disputed tax demand within six weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice along with all relevant documents during the said period. Upon receipt of such reply and subject to being satisfied that the sum of Rs.3.5 crore was

received from the petitioner, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply.

8. For the avoidance of doubt, it is made clear that amounts paid by the petitioner pursuant to the impugned order shall abide by the outcome of the remanded proceedings.

9. The writ petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

11.07.2024

Index : No
Speaking Order : Yes
Neutral Case Citation:No
klt

To

1.The Additional Commissioner,
Office of the Principal Commissioner of CGST & Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai – 34.

2.The Deputy Commissioner,
Thiru Vika Nagar Division,
Chennai North Commissionerate,
Newry Towers, 1st Floor, Plot No.2054-I,
12th Main Road, II Avenue, Anna Nagar,
Chennai – 40.

3.The Superintendent of Central Taxes,
Range V, Thiru Vika Nagar Division,
Chennai North Commissionerate,
Newry Towers, 1st Floor, Plot No.2054-I,
12th Main Road, II Avenue, Anna Nagar,
Chennai – 40.

SENTHILKUMAR RAMAMOORTHY,J.

klt

W.P.No.16889 of 2024
and
W.M.P. Nos.18576 of 2024

11.07.2024