IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16981 of 2024
and
W.M.P. Nos.18721 & 18722 of 2024

Mobase Electronics India Private Limited,
Rep.by its Authorised Signatory,
Mr. Yeong Boo Ko. ... Petitioner

Versus

1.Assistant Commissioner (ST),
Sriperumbudur Assessment Circle,
4/109, Chennai Banglore Road,
Varadharajapuram, Chennai – 123.

2.Deputy Commercial Tax Officer (ST),
Sriperumbudur Assessment Circle,
4/109, Chennai Banglore Road,
Varadharajapuram, Chennai – 123.

3.Assistant Commissioner (ST),
Thirumazhisai Assessment Circle,
4/109, Chennai Banglore Road,
Varadharajapuram, Chennai – 123.

4.State Tax Officer,
Group – VIII, Inspection -II,
Integrated Commercial Taxes Building,
Greams Road, Chennai – 6. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records relating to impugned assessment order bearing Ref.No.GSTIN No. 33AAZCS350R1ZK/2020-21 dated 04.04.2024 passed by the first respondent and quash the same.

For Petitioner : Mr. Raghavan Ramabadran,
for M/s. Lakshmi Kumaran and Sridharan Attorneys.

For Respondents : Mr. C. Harsha Raj,
Additional Government Pleader (Tax)

ORDER

An assessment order dated 04.04.2024 is challenged in this writ petition primarily on the ground that contentions raised by the petitioner were not taken into consideration and that the order is non-speaking with regard to certain heads of claim.

2. The petitioner received an intimation dated 22.02.2023 with regard to multiple heads under which taxes were proposed to be imposed. This was followed by show cause notice dated 20.07.2023. The petitioner replied on 24.01.2024. Additional submissions were made on 19.03.2024. The impugned order was issued thereafter on 04.04.2024.

3. Learned counsel for the petitioner challenges the impugned order on multiple grounds. The first ground of challenge is that a detailed show cause notice was not issued. He submits that details of the tax proposal were only set out in intimation dated 20.02.2023 and not in the show cause notice dated 20.07.2023. His next contention is that the petitioner's reply with regard to the classification issue was not taken into consideration especially contentions relating to the General Rules for Interpretation (the "*GRI*") in Schedule – I to the Customs Tariff Act, 1975. After pointing out that the petitioner had classified the smart key and lock system intended for use in motor vehicles under Chapter 83, particularly sub-heading 83012000 thereof, learned counsel submits that Chapter 83 deals with locks and keys of base metal. Indeed, he submits that 83012000 deals specifically with "*Locks of kind used for motor vehicles*". By referring to the factual finding in the impugned order to the effect that the lock and smart key are made up of a combination of metal and plastics, learned counsel contends that Rule 3(a) would become applicable in such circumstances and that the said rule indicates that the heading which provides the most specific description should be preferred

to headings that provide a more general description. Even if it did not fall within Rule 3(a) of the GRI, he contends that it would fall within Rule 3(b) thereof which states that the classification should be based on the material or component which gives the goods its essential character. Although the reply contained express reference to the above GRI, learned counsel submits that the same were not taken into consideration while drawing conclusions. According to learned counsel, if these GRI had been taken into consideration, the assessing officer would not have concluded that these goods fall under CTH 8708. His next contention was that the goods were classified as CTH 8708 merely on the ground that the goods are intended for use in motor vehicles. By classifying the goods under CTH 8708, learned counsel submits that the goods were subjected to tax at 28% instead of 18%. He also submits that the Explanatory Notes to the Harmonized System of Nomenclature (HSN) were referred to without any discussion thereon, and that the HSN also indicates that the smart key and lock system should be classified in chapter 83.

4. As regards the other defects dealt with in the impugned order, learned counsel referred to the observations of the proper officer and

pointed out that no reasons were recorded. By way of illustration, as regards defect no.4 relating to ineligible claim of Input Tax Credit (the "*ITC*"), he contended that the petitioner's reply was extracted and it was recorded that the taxpayer had availed of ineligible ITC. He submits that no reasons in support of such conclusion are discernible from the impugned order. According to learned counsel for the petitioner, the same pattern repeats itself with regard to other defects dealt with in the impugned order. Without prejudice to this contention, learned counsel submits that the petitioner agrees to remit Rs.1,75,00,000/- (Rupees One crore Seventy Five lakhs only) as a condition for remand.

5. In response to these contentions, Mr.C.Harsha Raj, learned Additional Government Pleader, contends that a writ petition should not be entertained against the impugned order. He submits that the order is detailed especially with regard to the classification issue. By referring to the order with regard to the said issue, he points out that reasons were recorded for concluding that the smart key and lock system of the petitioner does not qualify either as a padlock or lock under Customs

Tariff 8301. In particular, he pointed out that the dictionary definitions of these two terms were set out before concluding that the expression lock and key in Chapter 83 would not extend to an electronic lock and key systems that operate without use of the base metal component of the key.

6. He next contended that principles of natural justice were not violated. In support of the contention that the order does not warrant interference for breach of principles of natural justice, learned Additional Government Pleader referred to and relied upon the following judgments:

i) *Bhagath Raja v. Union of India & Ors, AIR 1967 SC 1606,* particularly page no.11, paragraph 15;

ii) *S.N.Mukherjee v. Union of India ; (1990) 4 SCC 594,* particularly paragraphs 35, 36 and 39;

iii) *Union of India v. Mohan Lal Capoor & Ors, (1973) 2 SCC 836*, particularly paragraph 28 thereof;

iv) *Oriental Bank of Commerce & Anrs, v. R.K.Uppal, (2011) 8 SCC 695,* particularly paragraph 27 thereof;

v) *Sri Rama Vilas Service (P) Ltd, v. C. Chandrasekaran and Ors, AIR 1965 SCC 107,* particularly paragraph 9 thereof.

7. Learned Additional Government Pleader contends that all these

decisions hold that a quasi-judicial authority is required to provide reasons in support of the decisions. However, it is not necessary for such reasons to be elaborate in the manner of a judgment of court of law. He also submits that the rationale for insisting on reasons is to disclose as to how the adjudicating authority applied his mind to the materials placed on record. According to learned Additional Government Pleader, the order impugned herein certainly contains reasons for rejecting the petitioner's classification and for placing the goods under CTH 8708. Merely because every contention raised in the petitioner's reply was not dealt with therein, he submits that it cannot be said that principles of natural justice were infringed. He further submits that an efficacious statutory remedy is available to the petitioner and that the petitioner should not be permitted to circumvent such statutory remedy in order to avoid the pre-deposit. Learned Additional Government Pleader also points out that the petitioner had filed statutory appeals in respect of two assessment periods and that one of those appeals pertains to a classification dispute. He also pointed out that this fact was not disclosed in the affidavit filed in support of the writ petition.

8. In response to these contentions, learned counsel for the petitioner submitted that there can be no quarrel with the propositions laid down in the cited judgments of the Hon'ble Supreme Court. In the case at hand, he contends that the order calls for interference because no reasons were set out in support of the findings relating to all issues other than the issue of classification. As regards the classification issue, he contends that critical contentions raised in the reply were not taken into account in the impugned order and that non-consideration thereof impacted the verdict. In support of these contentions, he relies upon the judgment of this Court in *Reckitt Benkiser (India) Ltd. v. State of Tamil Nadu, through its Principal Commissioner of GST, The Assistant Commissioner (ST), 2024 (3) TMI 218.* He also relied upon the judgment of the Hon'ble Supreme Court in *Intel Design System (India) Pvt. Ltd. v. Commissioner of Customs & Central Excise, 2008 (223) F.L.T. 135 (S.C),* particularly paragraphs 4 and 5 thereof with regard to the GRI and the Explanatory Notes to HSN. By relying on Circular No.12/2022 dated 26.09.2022 of the Commissioner of Commercial Taxes, Chennai (Circular No.12/2022), learned counsel submitted that the adjudicating

authorities were directed to meet each and every objection raised by the assessee in a cogent, clear and succinct manner. According to learned counsel, the impugned order falls short of these requirements.

9. The first question that falls for consideration is whether the impugned order warrants interference in exercise of discretionary jurisdiction. The judgments relied upon by learned Additional Government Pleader indicate that a quasi-judicial authority is required to record reasons. The rationale behind insisting on reasons is also set out in the said judgments. The judgments also add that such reasons need not be as elaborate as those in judgments of courts of law. By taking note of these principles, whether the order impugned herein contains reasons and whether the contentions raised by the petitioner were dealt with therein should be examined.

10. As regards the principal issue of classification, the petitioner had classified the goods under CTH 8301 of the Customs Tariff Act, which pertains to padlocks and locks of base metal and keys for the articles dealt with therein. Upon receipt of the show cause notice, by reply dated 24.01.2024, the petitioner referred to Schedule - I to the Customs

Tariff Act which contains the GRI in relation to classification. The petitioner expressly referred to Rule 3(a) and 3(b) thereof to contend that where the goods are classifiable under two headings of the Customs Tariff Act, the heading which provides the most specific description should be preferred to the heading providing the more general description. Rule 3(b) provides that the classification should be based on the material or component which gives the goods its essential character. Upon considering the goods in question, the assessing officer entered the following findings with regard to the nature of the goods:-

> *"In order to classify impugned goods under this chapter they must satisfy the chapter notes miscellaneous articles of base metal – Here both the car lock set and Cart smart key made of combination of both metal and plastics therefore, impugned goods do not merit classification under this chapter 83. "*

11. The above extract indicates that the assessing officer recorded a finding that the car lock and smart keys set is made of both metal and plastic. In other words, the factual finding was that the relevant goods were made of two materials. Out of the two materials, one material is dealt with in Chapter 83, whereas, the other is not. In that factual context,

the GRI appear *prima facie* to be applicable. In spite of the petitioner placing those GRI for consideration, on perusal of the impugned order, I find no discussion thereon. Undoubtedly, it was open to the assessing officer to consider the GRI and record a range of conclusions, such as that the cited GRI do not apply or, even if applicable, would not result in accepting the petitioner's classification. Whether non-consideration thereof violates principles of natural justice is considered next.

12. Learned Additional Government Pleader contended that it is not necessary for a quasi-judicial authority to deal with every contention raised by the assessee and, in principle, the said contention is liable to be accepted. Indeed, even in a court of law, not every contention raised by learned counsel is required to be or is recorded in the judgment. What would be the situation if a contention potentially has a strong bearing on the verdict, and such contention was not considered? The question to be posed on the facts of this case would be: could the result have been different if the GRI had been taken into consideration. If the answer to that question is that it would not make a difference to the verdict, non-consideration would not vitiate the decision on principles of natural

justice, whereas, if the answer is that the verdict could have been different, interference would be warranted for non-consideration thereof.

13. On examining the petitioner's reply and Rules 3(a) and 3(b) of the GRI, it is a distinct possibility that the outcome could have been different if such rules had been considered. In addition, although the order refers to the Explanatory Notes to HSN, there is no discussion thereon. *Prima facie,* these notes indicate that electrically operated locks, including those operated by radio-wave signal, fall within the scope of CTH 8301.20.

14. As regards the other heads of claim, the impugned order merely sets out the petitioner's reply and records that the tax proposal is being confirmed without any supporting reasons. By way of illustration, the following findings with regard to Defects no.4 and 15 are set out below:-

> " ***Defect No.4: Ineligible claim for ITC (list enclosed separately in soft copy)***
>
> ***Reply by the Taxpayer:***

The taxpayer vide their additional submission letter dated 22 March 2024 stated that:

QUOTE:

The impugned SCN has alleged that the Company claimed ineligible input tax credit covered under Section 17(5) of the CGST Act, 2017. In this regard, we have already submitted a detailed reply vide letter dated 24th January, 2024. Your good office has considered ineligible credit without any basis nor provided any supporting annexures to state why such credit is ineligible. The Company would like to submit the ITC register for the FY 2020-21 along with GSTR-2A for verification.

Hence, we request for good office to drop the proceedings for the input tax credit alleged as ineligible.

OBSERVATION OF THE PROPER OFFICER:

The reply of the taxpayer has been carefully analysed and on verification of GSTR-2A along with ITC register it was observed that the taxpayer has availed ineligible input tax credit to the extent of Rs.775810. Thereby the theto propose the reversal of ineligible input tax credit availed by the taxpayer."

Defect No.15: Canteen Expenses

Reply by the Taxpayer

" The taxpayer vide their replies have stated that the expenses are for factory and that they have not done recovery of such expenses from their employees"

Observation of the Proper Officer

" The reply of the taxpayer is verified based on which it is concluded that the tax is payable and the demand is confirmed, i.e. CGST Rs.18,23,188 and SGST of Rs.18,23,188 along with interest and penalty."

15. For reasons set out above, interference with the impugned order by way of remand is necessary. As regards the classification issue, reasons were specified in support of the conclusion, but vital contentions regarding GRI and the Explanatory Notes were not considered. In order to balance revenue interest, the impugned order dated 04.04.2024 is set aside on condition that the petitioner remits a sum of Rs.1.75 crore (Rupees One crore Seventy Five lakhs only) as agreed to within four weeks from the date of receipt of a copy of this order. The sum of Rs.1,75,00,000 exceeds 5% of the disputed tax demand under this head. The other heads of tax demand are not being reckoned in this regard

because unreasoned conclusions were recorded. Subject to being satisfied that the said amount was received, the assessing officer 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.

16. The Writ Petition is disposed of on the above terms. Consequently, the connected miscellaneous petitions are also closed.

09.07.2024

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

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