IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.18416 of 2024
and W.M.P.Nos.20223 and 20224 of 2024

Tvl.Sri Golden Super Market,
Rep. by its Proprietor,
Mr.C.Perumalsamy,
New No.9, Old No.1,
Sri Pachiamman Regency Cholambedu Road,
Thirumullaivoyal,
Chennai – 600062. ...Petitioner

Vs.

The Assistant Commissioner of GST
and Central Excise
Ponneri Division,
Chennai – Outer Commissionerate,
R-40, A-1, 100 Feet Road,
Mogappair,
Chennai-37. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent herein in Order-in-Original No.16/2023-GST(AC) in DIN.No.20231059XL0800924689 dated 31.10.2023 in GSTIN: 33ATXPM5780BIZD and quash the same as passed contrary to the circular No.183/15/2022-GST dated 27.12.2022.

For Petitioner : Mr.M.Desingu

For Respondent : Mr.Su.Srinivasan
Standing Counsel

ORDER

By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage itself.

2. Challenging the order dated 31.10.2023 passed by the respondent, the petitioner has filed the present Writ Petition.

3. Mr.Su.Srinivasan learned Standing Counsel, takes notice on behalf of the respondent.

4. Mr.M.Desingu, learned counsel for the petitioner contended that the respondent passed an impugned order dated 31.10.2023, on the ground that the petitioner has failed to produce the relevant invoices and other details as per Circular No.183/15/2022-GST, dated 27.12.2022.

5. According to the learned counsel for the petitioner where the difference between the input credit claimed in form GSTR-3B and that available in Form GSTR-2A of the registered person in respect of a supplier for the said financial year exceeds Rs.5,00,000/-, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the

Chartered Accountant or the Cost accountant, certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in Form GSTR-3B. In compliance of the said condition, the petitioner obtained the certificates from the Chartered Accountant and the same were submitted before the respondent on 03.10.2023, but without considering such certificates, the respondent passed demand order-in-original. The impugned demand order-in-original dated 31.10.2023 and summary of the order in DRC-07 dated 30.12.2023 were passed by the respondent contrary to the clarification issued by the Central Board of Indirect Taxes and Customs. Hence, he seeks to set aside the impugned order.

6. Per contra, learned Standing appearing for the respondent would submit that production of invoices is mandatory along with the certificate as contemplated under Circular dated 27.12.2022. Since the petitioner failed to produce the same, the impugned order came to be passed by the respondent in accordance with law. He further submitted that, if the petitioner is aggrieved by the impugned order, an alternative remedy is available before the Appellate Authority by way of an appeal and therefore, the present Writ Petition is not maintainable.

7. Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the respondent and perused the materials available on record.

8. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is clear that the issue involved in this Writ Petition is as to whether the petitioner is liable to produce the invoices along with certificates from the Chartered Accountant or Cost Accountant as there is difference between the ITC claimed in FORM GSTR -3B and in FORM GSTR 2A. The said aspect was elborately considered by the respondent and the impugned order came to be passed. As contended by the learned Standing Counsel appearing for the respondent, if at all the petitioner has any grievance, the petitioner has to file an appeal before the Appellate Authority. When the petitioner has a efficacious alternative remedy of statutory appeal, without exhausting the same, the present writ petition is not maintainable. Therefore, this Court is not inclined to interfere with the order passed by the respondent.

9. In the result, this Writ Petition is disposed of, granting liberty to the petitioner to file an appeal before the Appellate Authority within a period of

thirty(30) days from the date of receipt of a copy of this order. On such appeal being filed by the petitioner as directed, the respondent shall consider the same on merits, without rejecting it on the ground of limitation. No costs. Consequently connected miscellaneous petitions are closed.

12.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
msv

To
The Assistant Commissioner of GST
and Central Excise
Ponneri Division,
Chennai – Outer Commissionerate,
R-40, A-1, 100 Feet Road,
Mogappair,
Chennai-37.

Krishnan Ramasamy,J.,

msv

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