IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25977 of 2021
and
W.M.P.No.27431 of 2021

M/s.Sowmiya Spinners (P) Limited,
Represented by its Managing Director
Mr.K.M.Chinnadurai ... Petitioner

Vs.

The Deputy Commissioner of GST and
Central Excise,
Tirupur Division,
2nd Floor, 51, Elementary School Street,
Kumar Nagar, Tirupur – 641 603. ... Respondent

Prayer: 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 case relating to the impugned order Sl.No.03/2021-DC TPR (GST) dated 04.08.2021 issued by the respondent and to quash the same.

For Petitioner : Ms.R.Sri Visvapriya
for Mr.J.Shankarraman

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

ORDER

The petitioner has challenged the Impugned Order-in-Original No.03/2021-DC TPR (GST) dated 04.08.2021.

2. By the impugned order, the demand proposed in Show Cause Notice Reference No.01/2019 (DC) dated 13.11.2019 has been confirmed.

3. The dispute pertains to the Input Tax Credit which was transitioned by the petitioner without actually filing a return under the provisions of the Central Excise Rules, 2001 for the month of July 2017.

4. The petitioner had earlier received a Letter bearing O.C.No.804/2018 dated 21.12.2018 whereby, the petitioner was called upon to reverse the Input Tax Credit transitioned on 22.12.2017 under Section 142 of the Central Goods and Services Tax (CGST) Act, 2017.

5. Aggrieved by the same, the petitioner had filed W.P.No.5694 of 2019. The said writ petition was disposed on 19.06.2019. Pursuant to which, Show Cause Notice bearing Reference No.01/2019 (DC) dated 13.11.2019 was issued which has now culminated in the impugned order.

6. The case of the petitioner is twofold. It is submitted that *post facto* after the receipt of the aforesaid Letter dated 21.12.2018, the petitioner had also filed related returns under Rule 12(5) of the Central Excise Rules, 2001, on payment of necessary charges and therefore, the default if any has been cured. It is submitted that the substantive benefit of CENVAT credit which was permitted to be transitioned under Section 140 of the Central Goods and Services Tax (CGST) Act, 2017 ought not to have been denied to the petitioner.

7. That apart, the learned counsel for the petitioner would also submit that the petitioner has been assigned to the State Officers pursuant to the notification/circular issued by the Central Board of Indirect Taxes and Customs and therefore the impugned proceedings initiated by the respondent was without jurisdiction.

8. In this connection, the learned counsel for the petitioner has also drawn attention to the decision of this Court referred in W.P.Nos.34792 of 2019 etc batch.

9. Opposing the prayer, the learned Senior Standing Counsel for the respondent would submit that there is no merits in the present writ petition.

10. It is further submitted that the writ petition is liable to be dismissed as the Input Tax Credit which was transitioned was not reflected in the returns filed by the petitioner prior to 22.12.2017. It is submitted that the returns were filed by the petitioner only after the Letter dated 21.12.2018 was issued on 29.12.2018. Since the returns were filed belatedly, the question of regularizing the Input Tax Credit which was transitioned earlier without it being reflected in ER-1 returns filed for the month of July 2017 cannot be countenanced.

11. That apart, it is submitted that the decision of this Court cited by the learned counsel for the petitioner has been appealed by the Department before the Hon'ble Division Bench of this Court in Writ Appeal No.1805 of 2024 (Cross-Empowerment Appeal) and therefore on this count also, this writ petition is liable to be dismissed.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

13. In my view, as long as the petitioner was entitled to avail Input Tax Credit under the provisions of the CENVAT Credit Rules, 2004, it cannot be allowed to be lapsed, unless the provisions of the CENVAT Credit Rules, 2004 itself provided for its lapsing. In this connection, the decision of the Hon'ble Supreme Court in **Collector of Central Excise, Pune and others** Vs. **Dai Ichi Karkaria Limited and others**, (1999) 7 SCC 448 was invited wherein, it has been held as under:-

> ***"There is no provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. The credit in the instant cases having been taken validly, is, therefore, indefeasible."***

14. Thus, the credit which was earned by the petitioner cannot be defeated under the provisions of the CENVAT Credit Rules, 2001.

15. As far as the procedural irregularity committed by the petitioner in following the procedures under Section 140 of the Central Goods and Services Tax (CGST) Act, 2017 is concerned, the same has to be condoned as the procedures cannot come in the legitimate way of grant of Input Tax Credit.

16. In this connection, the decision of the Hon'ble Supreme Court in **State of Uttar Pradesh** Vs **Aurya Chambers of Commerce,** (1986) Vol 25 ELT 687/(1986) 3 SCC 50, is relevant wherein, the Hon'ble Supreme Court has held that procedures are handmaids of justice and not mistress of law.

17. In this case, at best the petitioner can be found fault for not filing the returns in time before attempting to transition the credit on 22.12.2017 *post facto*. The petitioner has however filed the returns on 29.12.2018. Thus, the lacuna if any stands cured/complied.

18. Therefore, the impugned order dated 04.08.2021 is liable to be quashed. Accordingly, it is quashed.

19. Thus, this Writ Petition stands allowed with consequential relief to the petitioner. No costs. Connected Writ Miscellaneous Petition is closed.

29.08.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Deputy Commissioner of GST and
Central Excise,
Tirupur Division,
2nd Floor, 51, Elementary School Street,
Kumar Nagar, Tirupur – 641 603.

C.SARAVANAN, J.

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