IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.26488 of 2024 &
W.M.P.Nos.28966 & 28970 of 2024

Sr.Sumathi Enterprises,
Represented by its Proprietor,
Mr.Somraj,
Having office at:
No.13, 2, Samudra Mudali Street,
Sowcarpet, Chennai - 600 108. ... Petitioner

Vs.

Office of the Assistant Commissioner (ST),
Peddunaickenpet Assessment Circle,
Room No.209, Chennai North Division,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai - 3. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the SCNS having reference No.ZD3308241748980 in GSTIN No.33BMNPS2591C1ZX, dated 21.08.2024 for the financial year 2022-23, which came to be issued by the office of the respondent as per the provisions of under Section 74 of the GST Act, with regard to ineligible ITC of CGST & SGST of Rs.15,88,276/- for the FY 2022-23 along with interest and penalty for the purchases made from M/s.Bharat Marketing (GSTIN No.33BEWPB6397C1ZA) during the financial year 2022-2023 as mentioned above and the same has to be treated as "Not eligible for claiming ITC' and "the same has to be reversed by the beneficiary" and quash the same as illegal, arbitrary and devoid of merits.

For Petitioner : Mr.Kumarpal Chopra

For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate (Taxes)

ORDER

The writ petition has been filed to quash the show cause notice in Form GST DRC-01, dated 21.08.2024, issued by the respondent.

2. The learned counsel for the petitioner submitted that the respondent issued the show cause notice in Form GST DRC-01, dated 21.08.2024, which was accompanied by an annexure notice dated 16.08.2024 on the GST portal. This notice sought details to justify the refund claim availed from the petitioner's supplier, Sumathi Enterprise. The notice asserts that the petitioner's other supplier, Tvl. Bharat Marketing, is non-existent and involved in bill trading activities. However, the learned counsel argued that Bharat Marketing had duly filed GST returns for the relevant period, which confirms the legitimacy of the transactions. The GST returns filed by Bharat Marketing validate the transactions and demonstrate that there is no resulting revenue loss to the respondent, as alleged in the show cause notice. Therefore, the petitioner contends that the claim of non-existence and involvement in bill trading activities is unfounded and does not justify the action taken in the show cause notice.

3. On the other hand, the learned Government Advocate for the respondent argued that the supplier, Tvl. Bharat Marketing, is a non-existent business entity involved in bill trading activities, as per the inspection report received from CBIC during a Special All India Drive against fake registrations and beneficiaries of bill trading. Consequently, the show cause notice in Form GST DRC-01 was issued. However, the petitioner approached this Court without responding to the show cause notice. Hence, she prayed for the dismissal of the writ petition.

4. I have considered the rival submissions and reviewed the materials available on record.

5. In the present case, the petitioner claimed ineligible input tax credit on purchases from the supplier, Tvl. Bharat Marketing, during the year 2022-2023. The basis for this claim was the allegation that Bharat Marketing is a non-existent business entity and engaged in bill trading activities, as per the inspection report received from CBIC during a Special All India Drive targeting fake registrations and beneficiaries of bill trading. Consequently, the ITC for the petitioner’s firm was blocked on 19.07.2024. The show cause notice in Form GST DRC-01 was issued on 16.08.2024, with the summary uploaded on 21.08.2024.

6. The challenge before this Court pertains solely to the summary order in Form GST DRC-01 dated 21.08.2024. It is important to note that the petitioner approached this Court without responding to the show cause notice. Procedural norms and principles of natural justice require that before seeking judicial intervention, the parties must respond to show cause notices to address the issues raised.

7. Considering the fact that the petitioner did not respond to the show cause notice and has prematurely approached this Court, it is deemed inappropriate to entertain the challenge at this juncture. The appropriate course of action for the petitioner would be to submit a response to the show cause notice. Only after this process, if the petitioner remains aggrieved by the decision, could they seek judicial review. Therefore, this Court is not inclined to interfere with the show cause notice at this stage. Accordingly, the writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

10.09.2024

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

r n s

To

Office of the Assistant Commissioner (ST),
Peddunaickenpet Assessment Circle,
Room No.209, Chennai North Division,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai - 3.

KRISHNAN RAMASAMY.J.,

r n s

W.P.No.26488 of 2024 &
W.M.P.Nos.28966 & 28970 of 2024

10.09.2024