IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.27950 of 2024
& W.M.P.No.30493 of 2024

M/s.Vestas Wind Technology India Private Limited,
Represented by its Company Secretary,
Tower 1, 9th Floor, Radial IT Park,
200 Feet Radial Road, Pallavaram,
Chenani 600 117

... Petitioner

Vs.

The Joint Commissioner (ST),
Chengalpattu Division,
No.26, Abirami Complex,
3rd Floor, Mahalakshmi Nagar,
Kanchipuram Main Road,
Thimmavaram, Chengalpattu 603 101

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in the Notice in Form GST RVN-01 dated 13.08.2024 bearing RFN No. date:MA330824065492T, issued under Section 108 of the TNGST Act, 2017/CGST Act, 2017 on the file of the respondent herein and quash the same as illegal.

For Petitioner	:	Mr.Shivadass, Senior counsel, for Mr.Rahul Unnikrishnan
For Respondent	:	Mr.C.Harsha Raj, Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned notice dated 13.08.2024 issued by the respondent.

2. Mr.C.Harsha Raj, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that as per the Circular No.26/2017 dated 29.12.2017, the petitioner, being an Exporter, is entitled for zero-rated supply and hence, if any tax amount was paid by the petitioner, he can either claim for refund of the said

amount or utilise the said amount vide Input Tax Credit (ITC) during the subsequent months. Therefore, initially, the petitioner had filed his refund application before the respondent, however, the same was rejected on the technical aspect, due to which, the petitioner had utilised the ITC for subsequent months. Subsequently, four showcase notices were issued by the Department during previous occasions on the ground of mismatch of credits. For the said show cause notices, the detailed replies were filed by the petitioner with regard to the utilisation of ITC. Considering the said replies, all the proceedings were dropped by the Department. Under the circumstances, now the impugned notice was issued by the respondent under Section 108 of the Goods and Services Tax Act, 2017 (hereinafter called as "GST Act") for the very same issue. Hence, he requests this Court to set aside the said impugned notice issued by the respondent.

4. On the other hand, the learned Additional Government Pleader appearing for the respondent would submit that in this case, the respondent had issued four show cause notices during the previous

occasions and thereafter, the said proceedings were dropped by the Jurisdictional Officers upon considering the reply filed by the petitioner.

5. He would further contend that now the respondent is intend to test the veracity of the four orders, whereby the Jurisdictional Officers had dropped the proceedings against the petitioner, and hence, issued a notice under Section 108 of the GST Act. Therefore, he would submit that it is the right course for the petitioner to file their reply and explain the case to the respondent.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent and also perused the materials available on record.

7. In the case on hand, it is clear that as per the Circular No.26/2017 dated 29.12.2017, the petitioner, being an Exporter, is entitled for zero-rated supply. Therefore, since the petitioner had already paid the tax amount, he had filed his refund application before the

respondent, however, the same was rejected on the technical aspect, due to which, the petitioner, with no other option, had utilised the ITC for subsequent months as per the terms of aforesaid circular. Thereafter, 4 show Cause notices were issued by the respondent on the previous occasions on the ground of mismatch of credit and the same were dropped upon considering the reply filed by the petitioner. Now, the respondent had issued a notice under Section 108 of the GST Act to test the veracity of the orders, where the proceedings were dropped by the Jurisdictional Officers during the previous occasions. In such case, this Court feels that it would be appropriate to direct the petitioner to file a reply and explain the case to the respondent. If any adverse order is passed by the respondent, the petitioner shall approach before this Court and challenge the order passed by the respondent. Accordingly, this Court passes the following order:

> (i) The petitioner shall file their reply, along with the required documents, if any, for the impugned show cause notice dated 13.08.2024, within a period of three weeks from the date of receipt of copy of this order.

(ii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

26.09.2024

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

To

The Joint Commissioner (ST),
Chengalpattu Division,
No.26, Abirami Complex,
3rd Floor, Mahalakshmi Nagar,
Kanchipuram Main Road,
Thimmavaram, Chengalpattu 603 101

KRISHNAN RAMASAMY.J.,

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