IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29741 of 2024
& W.M.P.Nos.32408 & 32409 of 2024

M/s.Green Star Traders,
Represented by its Proprietor,
Mr.Mahikumar,
No.10, Old No.29, 2nd Main Road,
Kakkan Nagar, Adambakkam,
Chennai 600 088.

... Petitioner

Vs.

Commercial Tax Officer,
Room No.224, Second Floor,
Integrated Building of Commercial Taxes
and Registration Department,
Farnpet, Chennai 600 035.

... 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 pertaining to the impugned order dated 23.04.2024 and bearing Ref.No.ZD330424177105M passed by the respondent and quash the same.

For Petitioner : Mr.Tejpal Jain

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 23.04.2024 passed by the respondent.

2. Mr.T.N.C.Kaushik, 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 in this case, the petitioner had purchased goods from the supplier, for which he has paid the tax amount along with the cost of the said goods to the supplier. However, the supplier had neither remitted the said tax amount to the department nor provided any proof with regard to the payment of tax amount by the petitioner. In this regard, they had filed a detailed reply

for the show cause notice issued by the respondent. However, without considering the same, the impugned order came to be passed and the recover proceedings were also initiated by the respondent by reversing the ITR, which was already availed by the petitioner. Hence, he would contend that the petitioner cannot be liable for the default committed by the supplier and requests this Court to set aside the impugned order passed by the respondent.

4. On the other hand, the learned Additional Government Pleader appearing for the respondent would submit that in this case, no tax amount was remitted for the goods purchased by the petitioner and hence, in terms of the provisions of Goods and Services Tax Act, 2017 (hereinafter called as "GST Act"), the respondent had reversed the ITR availed by the petitioner and called upon the petitioner to pay the tax amount. In this regard, Form DRC-01 and Form DRC-01A were issued by the respondent, for which, a detailed reply was filed by the petitioner and the said reply was duly considered by the respondent. However, since the petitioner had failed to file any proof with regard to the remittance of tax by the supplier, the respondent had passed the

impugned order. Hence, he would contend that there is no fault on the part of the respondent and requests this Court to dismiss the present petition.

5. In reply, the learned counsel for the petitioner would submit that no detailed show cause notice was issued by the respondent and the petitioner had filed their detailed reply, only for the summary of show cause notice. Hence, he would contend that the impugned order came to be passed in violation of principles of natural justice.

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, upon perusal of the documents and impugned order, it is clear that two notices were issued by the respondent on 11.12.2023 and 08.11.2023 explaining the reason for issuance of Form DRC-01. Upon receipt of the said letters, a detailed reply was filed by the petitioner.

8. The issue that has to be decided in this matter is as to whether the supplier had remitted the GST for the products purchased by the petitioner or not, and the summary of show cause notice had clearly explicit the crux of the said issue. In such case, the petitioner should have adduced any evidence with regard to the remittance of GST by the supplier. However, no such material evidence was produced by the petitioner either before the respondent or before this Court.

9. Normally, if a supplier failed to remit the tax amount, the purchaser will be held liable and the Department will initiate action against the said purchaser for recovery of the said tax amount by reversing ITC. The law is very well settled in this aspect.

10. In this case, the fact remains that the petitioner was unable to provide any proof with regard to the remittance of tax by the supplier. In such case, if no tax amount was remitted by the petitioner's supplier, certainly the said tax amount will be collected from the petitioner. Thereafter, once the tax was remitted by the supplier, either the

Department will refund the tax amount, which was collected from the petitioner, or the petitioner will be permitted to adjust the said amount during the availment of ITC for subsequent months.

11. Therefore, in the absence of material evidences with regard to the remittance of tax amount by the supplier, the respondent had rightly arrived at the conclusion to reverse the ITC availed by the petitioner and passed the impugned order dated 23.04.2024. In such case, this Court also does not find any merits in the present petition. Therefore, this Court is inclined to dismiss this petition by granting liberty to the petitioner to file an appeal against the impugned order.

12. Accordingly, this writ petition is dismissed. The petitioner is is granted liberty to file their appeal before the concerned Appellate Authority within a period of 30 days from the date of receipt of copy of this order. In such case, the Appellate Authority shall consider the same on its own merits and in accordance with law by providing sufficient opportunity to the petitioner without pressing for limitation. No cost. Consequently, the connected miscellaneous petitions are also closed.

15.10.2024

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

To

Commercial Tax Officer,
Room No.224, Second Floor,
Integrated Building of Commercial Taxes
and Registration Department,
Farnpet, Chennai 600 035.

KRISHNAN RAMASAMY.J.,

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