IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35189 of 2024
and
WMP No.38107 of 2024

M/s.GFTC Private Ltd.,
rep. By its Director B.Ravi : Petitioner

versus

The Assistant Commissioner of
CGST and Central Excise,
Triplicane Division,
Chennai North Commissionerate,
26/1, Uthamar Gandhi Road,
Nungambakkam, Chennai 34 : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records pertaining to the Impugned order-in-original no. CHE-GST-AC-35-2024-25 dated 28.08.2024 passed by the Respondent and quash the same

For Petitioner : Mr.Hari Radhakrishnan

For Respondent :Mr.S.Gurumoorthy,
Central Government Standing counsel

ORDER

The present writ petition is filed challenging the impugned order dated 28.08.2024 on the limited ground that the petitioner's claim of input tax credit on supplies received from SEZ was rejected on the premise that business entries have not been furnished in response to the notices, which were issued.

2. The petitioner is engaged in the business of supply of various goods such as footwear with outer soles of rubber and is a registered person under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid appropriate taxes. However, during the scrutiny of the petitioner's monthly returns, the following discrepancies were noticed:

i) Mismatch between GSTR 3B/GSTR9 and GSTR 2A

ii) Non reversal of ineligible ITC taken on invoices issued by the suppliers who have filed their GSTR-3B returns for the relevant tax period and their registrations are cancelled

iii) Non payment of interest for belated filing of statutory GSTR-3B returns during the tax period from April 2019 to March 2020

iv) Non payment of late fee for delayed filing of GSTR 3B returns during the tax period from April 2019 to March 2020.

2.1. Subsequently an intimation was issued to the petitioner in FORM GST ASMT -10 on 08.03.2024, followed by a notice in DRC 01 dated 16.04.2024, in response to the same, the petitioner had filed its reply on 29.04.2024, wherein, it is stated that the petitioner's in support of the claim of ITC under IGST Act have attached the documents, namely, invoices, import documents, which includes bill of entries, payment receipts and an auditor certificate, affirming that the supplies were IGST Import Ex Bond clearance from SEZ, etc. However, a show cause notice No.20 of 2024 dated 22.05.2024 came to be issued reiterating the proposal. In response to the same, the petitioner submitted its reply on 27.05.2024, reiterating its claim that they are entitled to the input tax credit in respect of the supplies received from SEZ and also submitted the documents namely invoices, import documents, which includes bill of entries, payment receipts and an auditor certificate, in support of the said claim. A personal hearing was granted on 01.07.2024, which was attended by the petitioner and reiterated its submission once again. However, the impugned order came to be passed, confirming the proposal, on the premise that the petitioner have not submitted bills of entries either physical copies or online and thus proceeded to reject the claim of input tax credit on the supplies received from SEZ.

3. It is submitted by the learned counsel for the petitioner that the impugned order insofar as it finds that bills of entries, either physical or online copies have not been furnished is contrary to the material on record inasmuch as the petitioner while filing its reply in response to DRC 01A as well as the show cause notice No.20 of 2024, had submitted copies of documents including bills of entries. It is thus submitted that the impugned order suffers from non application of mind to the material on record.

4. To the contrary, learned Central Government Standing Counsel would submit that this being an appelable order, this court ought not to entertain it.

5. Having heard both sides, this court is conscious of the fact that normally jurisdiction under Article 226 would not be entertained when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction and has exceptions carved out to the above rule, one such exception is where the order is without jurisdiction.

6. This court is of the view that there is merit in the submission of the petitioner that the impugned order does suffer from non application of mind to the material on record inasmuch as the petitioner had admittedly furnished bills

of invoices on more than one occasion. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they will once again furnish physical copies of bills of entries.

7. Learned Central Government Standing Counsel for the respondent would submit that if that be case, the same would be considered and orders would be passed in accordance with law, after affording the petitioner a reasonable opportunity of hearing.

8. In such circumstances, the impugned order dated 28.08.2024 is set aside. The impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections along with relevant documentary evidence within a period of two weeks from the date of receipt of a copy of this order. If replies/documents are filed, the same would be considered by the respondents and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the objections/documentary evidence are not filed within the stipulated period, i.e., two weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored

9. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mrn

To
The Assistant Commissioner of
CGST and Central Excise,
Triplicane Division,
Chennai North Commissionerate,
26/1, Uthamar Gandhi Road,
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<u>MOHAMMED SHAFFIQ, J.</u>

mrn

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