IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35658 of 2024
and
W.M.P.Nos.38514 and 38515 of 2024

M/s.The Ramco Cements Limited,
Represented by its Senior General Manager,
T.Mathivanan (M/62),
5th Floor, 98A Auras Corporate Centre,
Dr.Radhakrishnan Salai, Mylapore,
Chennai 600 004.

... Petitioner

Vs.

The Deputy Commissioner (ST)I,
Large Tax Payers Unit,
4th Floor, Integrated Building for Commercial
Taxes and Registration Department,
Government Farm Village, Nandanam,
Chennai 600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for records of the respondent in the impugned order in GSTIN/33AABCM8375L2Z2/2019-20 dated 23.08.2024 and quash the same.

For Petitioner	:	Ms.J.Vamini for K.Vaitheeswaran
For Respondent	:	Mr.C.Harsha Raj Additional Government Pleader

ORDER

The present writ petition is filed challenging the proceeding dated 23.08.2024 on the ground that the impugned order suffers from non application of mind to the reply and the material furnished by the petitioner.

2. The petitioner is engaged in the manufacture and sale of cement and is registered under the GST Act and has paid appropriate taxes. The petitioner had filed the returns for the relevant period 2019-20 in Form GSTR-3B, GSTR-9 and GSTR-1. However, during the course of audit it was noticed *inter alia* that the petitioner has availed credit in respect of transactions wherein payments have not been made within 180 days and thus hit by the second proviso to Section 16(2)(d) of the GST Act. It was also found that the petitioner had extended corporate guarantees and the same has been treated as taxable supplies liable to tax during the relevant period. The petitioner had in response submitted its objection vide reply dated 27.10.2023, 01.12.2023, 11.03.2024, 27.03.2024, 26.06.2024, 14.08.2024 and 22.08.2024.

3. It is submitted by the learned counsel for the petitioner that the Input Tax Credit has been availed only in respect of those supplies in respect of which payments have been made within a period of 180 days from the date of invoice

of the supplier and they had submitted the Chartered Accountant Certificate to that effect. It is also submitted by the learned counsel for the petitioner that they had in fact furnished documents though they may not contain the ageing report. The ageing report was not furnished because the same was not called for by the assessing authority. It is submitted that they had furnished the following documents:

i. Audit Certificate for the value of Trade payable to vendors for the State of Tamil Nadu for the year 2019-20.

ii. Sample copies of the Bank Statement to show evidence of payment of the same.

iii. Summary list of vendors as per our ITC register wherein the breakup of vendors under Eligible ITC and Ineligible ITC for the year 2019-20.

4. It is further submitted by the learned counsel for the petitioner insofar as the corporate guarantees are concerned Circular No. 204/16/2023-GST, Central Board of Indirect Taxes and Customs GST Policy Wing, dated 27.10.2023, provides that corporate guarantees would be subject to tax only from 27.10.2023 and thus levy of tax on corporate guarantee is completely lacking jurisdiction and is without authority of law and therefore unsustainable as it falls foul of Article 265 of the Constitution.

5. It is submitted by the learned counsel for the respondent that the documents submitted by the petitioner were rejected on the premise that the tax payer had however not furnished the ageing report vendor wise despite the officer having sought for the same specifically during the course of the hearing on 08.07.2024. The relevant portion of the order is extracted hereunder:

> *"The reply filed by the taxpayer has been examined carefully and the following observations are made:*
>
> *1. The taxpayer has furnished only the state wise break up and break up for Tamil Nadu only. He has not furnished the full creditors list for Rs. 184,63,10,439/- relating to Tamil Nadu out of which a sum of Rs. 124,57,02,491.00 relating to Non-venders and only a sum of Rs.60,06,11,548/- relating to vendors and produced certificate from the charted Accountant to this effect.*
>
> *2. During the personal hearing conducted on 08.07.2024, the taxpayer was requested to furnish the ageing report vendor wise creditors with payment details. But the taxpayer has failed to furnish the ageing report either before the Audit Officer of before the Proper Officer till date.*
>
> *3. The taxpayer has not furnished the details of the ageing report, till date (23.08.2024) for inward supplies and payments made to the creditors along with proof of bank statements.*
>
> *In the absence of the above documentary evidences, the ITC availed by the taxpayer on their inward supplies have to be reversed and recovered."*

6. It is thus submitted by the learned counsel for the respondent by placing reliance upon the order of adjudication that despite a specific request having been made directing the petitioner to furnish the ageing report vendor wise however the same was not furnished and even from the documents which has

been submitted before this Court it is difficult to correlate.

7. It is further submitted by the learned counsel for the respondent that the petitioners were aware of the fact that the Input Tax Credit was sought to be disallowed on the premise that it does not comply with the mandate contained in the 2nd Proviso to Section 16(2)(b) or (d) and the petitioners having been put on notice as early as 11.10.2023, it is up to the petitioner to come forward and let in evidence which would support their case that the claim of Input Tax Credit is in fact eligible instead admittedly the petitioners have only furnished sample copies of transaction. It was submitted by the learned counsel for the respondent that even during the course of the audit that the petitioners were required to furnish the ageing report, which the petitioners failed to produce until the order of adjudication was made.

8. It was submitted by the learned counsel for the respondent that adequacy or inadequacy of evidence is something this Court should not examine and the learned counsel for the respondent would submit that this is a matter which ought to be relegated before the appellate authority. Insofar as the circular relating to corporate guarantee, the learned counsel for the respondent would submit that it is a question which is to be examined by the appellate authority.

9. Heard both sides and perused the material on record.

10. It is trite law that Court in exercise of its powers of Judicial review under Article 226 of the Constitution of India, would not get into disputed question of fact nor examine adequacy or sufficiency of evidence. In the present case, it is not conclusive that the Input Tax Credit has been availed only in respect of those supplies in respect of which payments have been made within a period of 180 days from the date of invoice given by the supplier. The above being essentially a question of fact unless shown to be perverse, this Court would not interfere but would rather exercise restraint. Further, the adequacy or sufficiency of evidence is normally not to be examined under Article 226 of the Constitution of India. In this regard, it may be relevant to refer to the following decisions:

> i)***Mohd. Shahnawaz Akhtar v. District Judge, Varanasi*** *reported in* ***(2010) 5 SCC 510:***
>
> *"...we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that*

the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised….”

(ii) <u>State of A.P. v. Chitra Venkata Rao, reported in (1975) 2 SCC 557 :</u>

"A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoobv.K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64] ."

11. At this juncture*, i*t may also be relevant to to refer to the following judgment of the Supreme Court in the case of ***Thansingh Nathmal v. Supt. of Taxes****,* reported in ***AIR 1964 SC 1419*****,** wherein, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the Writ Petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus :

“*7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and* *the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

11.1. There can be no doubt that even though the High Court can entertain a Writ Petition against any order or direction passed / action taken by the State and / or its authorities under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law.

12. In the light of the above discussion it appears that this is a case where it is appropriate for the petitioner to avail the alternate remedy by way of an appeal. Thus the writ petition is disposed of with liberty to the petitioner to approach the appropriate appellate authority. However, the period spent in these writ petitions shall be excluded in reckoning the limitation, if any, for filing statutory appeal.

13. Accordingly, these writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.11.2024

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

To:

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MOHAMMED SHAFFIQ, J.

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