BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.9302 of 2024
and
W.M.P.(MD) Nos.8490 and 8492 of 2024

M/S.First Choice Outsourcing Services,
A Partnership Firm,
rep. By its Managing Partner P.Selvakumar,
No.35, Water Tank Building,
Near Rajaganapathy Temple,
Periyar Nagar,
Trichy, Trichy District. ... Petitioner

/vs./

1.The Joint Commissioner,
O/o. the Commissioner of GST and Central Exercise,
No.1, Williams Road,
Cantonment, Trichy.

2.The Joint Commissioner,
Member SGST,
Authority for Advance Ruling,
GST Bhavan,
Chennai, Tamil Nadu. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order of the 1st Respondent in C.No.GEXCOM /ADJN/ GST /JC/272/2023-ADJN DIN- 20240259XN0000914639 dated 14.02.2024 and the consequential impugned order of the 2nd Respondent in order No.1/ARA/2024 dated 26.02.2024 and quash the same as illegal.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Heard Mr.R.Murugan, learned counsel for the petitioner and Mr.N.Dilip Kumar, learned Standing Counsel for the respondents.

2.The petitioner has challenged the Order in Original No.24/2023-24 dated 14.02.2024 passed by the first respondent/the Joint Commissioner, Office of Commissioner of GST and Central Exercise, Trichy and the order dated 26.02.2024 passed by the second respondent, namely the Authority for Advance Ruling under the provisions of the respective GST enactments.

3.By the impugned order of the first respondent dated 14.02.2024, the first respondent has confirmed the following amounts as due and payable by the petitioner.

"i) I confirm the demand of an amount of Rs.3,36,59,502/- (Rupees Three Crore Thirty Six Lakh Fifty Nine Thousand Five Hundred and Two Only) (CGST- Rs.1,68,29,751/- SGST- Rs. 1,68,29,751/-) as against the demand of Rs.4,68,25,905/-, towards short-payment of GST amount during the period July 2017 to March 2021 from M/s First Choice Outsourcing Services, Trichy under Section 74 (9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017.

ii) On re-quantification of demand of Rs.4,68,25,906/-, towards short-payment of GST amount during the period July 2017 to March 2021, the demand gets reduced to Rs.3,36,50,502/-. Consequently the differential demand of Rs.1,31,66,404/- is dropped.

iii) I appropriate an amount of Rs.98,09,572/ (CGST Rs. 49,04,786/- & SGST Rs.49,04,786/-) already paid through DRC-03 Challans as detailed in para 14-3.5 above, towards the demand confirmed at Sl. No. (1) above.

iv) I confirm the demand of an amount of Rs.29,71,455/- (Twenty Nine Lakh Seventy One Thousand Four Hundred and Fifty Five Only) (IGST Rs 58,591/-, CGST Rs. 1,476,432/- and SGST- Rs.1,476,432/-) towards availment and utilization of Ineligible ITC beyond the due date stipulated in Section 16(4) during the period January 2019 to March 2019 and November 2019 to March 2020 from M/s First Choice Outsourcing Services, Trichy under Section 73 (9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act 2017.

v) I confirm an amount of Rs. 42,10,385/- (Forty Two Lakh Ten Thousand Three Hundred and Eighty Five Only) (IGST Rs.6,377/-, CGST Rs.21,02,004/-, SGST- Rs.21,02,004/-) towards availment and utilization of ineligible ITC on account of difference between GSTR-2A and GSTR-3B Returns during the period November 2018 to March

2021 from M/s First Choice Outsourcing Services, Trichy under Section 16(2) read with Section 73 (9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act 2017.

vi) I confirm an amount of Rs. 55,64,344/- (Fifty-Five Lakh Sixty-Four Thousand Three Hundred and Forty-Four Only) (CGST-Rs. 27,82,172/-and SGST- Rs. 27,82,172/-) towards availment and utilization of Fraudulent ITC availed and utilized on strength of alleged fake Invoices during the period January 2020 to March 2021 from M/s First Choice Outsourcing Services, Trichy under Section 16 read with Section 74 (9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act 2017.

vii) I confirm an amount of Rs.18,45,065/- (Eighteen Lakh Forty Five Thousand and Sixty Five Only) (CGST - Rs. 9,22,532/-, SGST - Rs. 9,22,533/-) towards availment and utilization of wrong ITC availed and utilized on their own Invoices during the period January 2020 to March 2021 from M/s First Choice Outsourcing Services, Trichy under Section 16 read with Section 73 (9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act 2017

viii) Interest at appropriate rate is demanded from M/s First Choice Outsourcing Services, Trichy on the GST demand confirmed in SI Nos. (i), (iv), (v), (vi) and (vil) above, under the provisions of Section 50 of the CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act 2017

(ix) 1 impose a penalty equal to the amount of Rs.3,36,59,502/ (CGST Rs 1,68,29,751/ SGST Rs. 1,68,29,751/-) against the short payment of tax confirmed at SI No.(i) above on M/s First Choice Outsourcing Services, Trichy, under Section 74(9) read with corresponding provisions of TNGST Act, 2017.

(x) I impose a penalty equal to the amount of Rs. 55,64,344/- (CGST-Rs. 27,82,172/- and SGST Rs. 27,82,172/-) against fraudulent ITC availed on fake invoices confirmed at Sl No.(vi) above on M/s First Choice Outsourcing Services, Trichy under Section 74(9) read with corresponding provisions of TNGST Act, 2017

(xi) I impose a penalty of Rs. 9,20,194/ (IGST Rs. 20,000/-, CGST -Rs. 4.50,097/- and SGST Rs. 4,50,097/-) in respect of demand confirmed at SI Nos.(iv), (v) and (vii) above on M/s First Choice Outsourcing Services, Trichy, under Section 73(9) read with corresponding provisions of TNGST Act, 2017 and Section 20 of IGST Act, 2017.

(xii) I refrain from imposing any penalty on M/s First Choice Outsourcing Services, Trichy, under section 122(1)(iii) of the CGST Act, 2017 and corresponding provisions of TNGST Act, 2017 for the reasons narrated in para 14.7.4 above.

(xiii) I refrain from imposing any penalty on M/s First Choice Outsourcing Services, Trichy, under section 122(2)(b) of the CGST Act, 2017 and corresponding provisions of TNGST Act, 2017 for the reasons narrated in para 14.7.4 above

(xiv) I impose a penalty of Rs. 1,00,000/- (IGST-Rs 50,000/-, CGST-Rs.25,000 & SGST- Rs. 25,000/-) on Shri Selvakumar Pitchai, Managing Partner, M/s First Choice Outsourcing Services, under Section 122(3) (a) and corresponding provisions of TNGST Act, 2017, read with Section 20 of IGST Act, 2017

xv) I impose a penalty of Rs. 1,00,000/- (IGST-Rs. 50,000/-, CGST-Rs.25,000 & SGST- Rs. 25,000/-) on Shri Yogaraja Rajaman? ckam, Partner, M/s First Choice Outsourcing Services., under Section 122(3) (a) and corresponding provisions of TNGST Act, 2017, read with Section 20 of IGST Act, 2017

vi) I impose a general penalty of Rs. 1,00,000/- (IGST-Rs. 50,000/-, CGST- Rs.25,000 & SGST- Rs. 25,000/-) on M/s First Choice Outsourcing Services, under Section 125 and corresponding provisions of TNGST Act, 2017, read with Section 20 of IGST Act, 2017.

(xvil) M/s First Choice Outsourcing Services, Trichy are also informed that in terms of Section 74(11) of the Central Goods and Services Tax Act, 2017 and corresponding provisions of TNGST Act 2017, where goods and services tax and applicable Interest are paid within a period of thirty days from the date of communication of this order passed under the sub section (9) of Section 74 and corresponding provisions of TNGST Act 2017, the penalty shall be 50 percent of such

goods and services tax and proceedings in respect of goods and services tax, Interest and penalty shall be deemed to be concluded, provided the said reduced amount of penalty is also paid within the said thirty (30) days."

4.The impugned order dated 14.02.2024 precedes the show cause notice dated 30.06.2023, which in turn precedes the investigation by the Authorities as early as on 12.11.2020 as captured in para 7.13 of the impugned order dated 14.02.2024, which reads as under:-

"7.13 The applicant was issued with a show cause notice dated 30.06.2023 which involves issues of short declaration of taxable outward supply availment and utilization of ineligible input tax credit, excess availment of input tax credit etc. It is a fact that the case was initiated on 12.11.2020 by the Headquarter Preventive Unit, Trichy GST Commissionerate and a DRC 01A dated 15.06.2023 was issued by the Headquarter Preventive Unit, Trichy GST Commissionerate which consequently resulted in issuance of show cause notice dated 30.06.2023"

5.The petitioner filed an application for advance ruling before the second respondent on 05.07.2023 after the issuance of the show cause notice, which has culminated in the impugned order of the first respondent dated 14.02.2024. The second respondent has now dismissed the application for advance ruling citing first proviso to Section 98(2) of the GST Act, which reads as under:-

> *"**98.Procedure on receipt of application.***
> *1) ....*
> *2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application"*

6.There is no dispute that the subject matter of the show cause notice dated 30.06.2023, which has culminated in the order of the first respondent dated 14.02.2024, was the subject matter, in respect of which the petitioner wanted a clarification by filing an application before the second respondent on 05.06.2023, which has now culminated in the order passed by the second respondent dated 26.02.2024. Therefore, the challenge to the order passed by the second respondent on 26.02.2024 cannot be countenanced.

7.As far as the challenge to the impugned Order in Original dated 14.02.2024 Order in Original No.24/2023-24 passed by the first respondent is concerned, the petitioner has an alternate remedy before the Commissioner under Section 107(2) of the GST Act, 2017, which reads as under:-

> *"**107.Appeals to Appellate Authority:-***
> *1) ....*
> *(2) The Commissioner may, on his own motion, or upon request*

from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order."

8.In view of the above, I find no merit in the present writ petition. Therefore, the Writ Petition stands dismissed. The petitioner is directed to file an appeal before the Appellate Commissioner as mentioned above within the period of limitation under Section 107(2) of the GST Act, 2017.

No costs. Consequently, connected Miscellaneous Petitions are closed.

16.04.2024

Index : Yes / No
Internet : Yes / No
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C.SARAVANAN, J.

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