BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2024**

CORAM:

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

W.P.(MD) No.15501 of 2024
and
W.M.P.(MD) Nos.13546 and 13549 of 2024

M/S.Femina Shopping Mall Private Limited,
rep. by its Director,
J.Kalandhar Naina Mohamed ... Petitioner

/vs./

The Assistant Commissioner,
Division-I, GST-Trichy,
O/o. Deputy/Assistant Commissioner of GST
and Central Excise,
Trichy I Division, No.1,
Williams Road,
Contonment,
Tiruchirappalli 620 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide DIN-20231259XNO10061616D in order in Original No.41/2023-GST dated 26.12.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings.

For Petitioner : Mr.Raja.Karthikeyan

For Respondent : Mr.R.Nandhakumar
Senior Standing Counsel

ORDER

This writ petition is disposed of at the time of admission after hearing the learned counsel for the petitioner and the learned Standing Counsel for the respondent and after dispensing with the requirement of filing of counter.

2.In this writ petition, the petitioner has challenged the impugned Order in Original No.41/2023-GST dated 26.12.2023 bearing Ref.C.No.IV/19/35/2023-GST ADJN. By the impugned order, the respondent has confirmed the following amounts on the petitioner:

ORDER

a) I confirm the demand of Rs.1,24,25,119/- (IGST : Rs.9,39,137/-, CGST : Rs.57,27,118/-, SGST : Rs.57,27,118/-, CESS : Rs.31,746/-), being wrongly availed and utilized input tax credit in GSTR 3B in contravention of the provisions of Section 16(2)(c) of CGST/SGST Act, 2017, under section 73(9) of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017 and with the corresponding provisions of The Tamil Nadu GST Act, 2017 and Goods and service tax (Compensation to states) Act, 2017;

b) I confirm the demand of Rs.1,41,576/- (CGST-Rs.70,788/-, SGST-Rs.70,788) towards the demand of tax on services received from unregistered persons

(RCM), under section 73(9) of the CGST Act, 2017, read with the corresponding provisions of The Tamil Nadu GST Act, 2017;

c) I confirm the demand of **Rs.71,194/-** (CGST : Rs.35,597/-, SGST : Rs.35,597/-) towards the short payment of tax on tea stall sales and non-payment of tax on income from employees for providing canteen facilities, under section 73(9) of the CGST Act, 2017, read with the corresponding provisions of The Tamil Nadu GST Act, 2017;

d) I confirm the demand of **Rs.5,65,676/-** (IGST : Rs.872/-, CGST : Rs.2,82,402/-, SGST : Rs.2,82,402/-), towards the reversal of common credit attributable to exempted supplies, under section 73(9) of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017 and with the corresponding provisions of The Tamil Nadu GST Act, 2017;

e) I confirm the demand of interest of **Rs.75,435/-** (IGST : Rs.290/-, CGST : Rs.27,501/-, SGST : Rs.47,644/-) for delay in payment of tax as quantified in the show cause notice, under section 50 of the CGST Act, 2017, read with the corresponding provisions of The Tamil Nadu GST Act, 2017;

f) I demand interest on the tax amount confirmed at a), b), c) and d) above, at the applicable rate, under section 50 of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017 and with the corresponding provisions of The Tamil Nadu GST Act, 2017 and Goods and service tax (Compensation to states) Act, 2017;

g) I, impose a penalty of Rs. 12,49,338/- (IGST : Rs.93,914/-, CGST : Rs.5,72,712/-, SGST : Rs. 5,72,712/-, CESS : Rs.10,000/-], under section 122(2)(a) read with section 73(9) CGST Act, 2017, read with Section 20 of the IGST Act, 2017 and with the corresponding provisions of The Tamil Nadu GST Act, 2017 and Goods and service tax (Compensation to States) Act, 2017 for the demand confirmed at a) above;

h) I impose a penalty of Rs.20,000/- (CGST : Rs.10,000/-, SGST : Rs.10,000/-) under section 122(2)(a) read with section 73(9) CGST Act, 2017, read with the corresponding provisions of The Tamil Nadu GST Act, 2017 for the demand confirmed at b) above;

i) I impose a penalty of Rs.20,000/- (CGST : Rs.10,000/-, SGST : Rs.10,000/-) under section 122(2)(a) read with section 73(9) CGST Act, 2017, read with the corresponding provisions of The Tamil Nadu GST Act, 2017 for the demand confirmed at c) above;

j) I impose a penalty of Rs.66,480/- (IGST : Rs.10,000/-, CGST : Rs.28,240/-, SGST : Rs.28,240/-) under section 122(2)(a) read with section 73(9) CGST Act, 2017, read with the corresponding provisions of The Tamil Nadu GST Act, 2017 for the demand confirmed at d) above.

3.The impugned order confirms the demand that was proposed in the notices that preceded the impugned order. The petitioner had also participated in the aforesaid proceeding.

4.It is the specific case of the petitioner that the petitioner failed to notice that the impugned order had been passed on 26.12.2023 and that on the last date ie., on 29.04.2024, an attempt was made by the petitioner to upload the appeal. However, the appeal was not received in the system in the absence of the digital signature in the impugned order.

5.The learned counsel for the petitioner submits that the petitioner may be given an opportunity to pursue the appellate remedy.

6.Having considered the submissions made by the learned counsel for the petitioner and the learned Standing Counsel for the respondent, I am of the view that the petitioner can be permitted to file a statutory appeal before the Appellate Authority, namely the Commissioner (Appeals), within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall file a hardcopy of the appeal as also a soft copy electronically within the aforesaid period, subject to the petitioner pre-depositing the amount as required under Section 107 of the respective GST enactment. If such an appeal is filed together with pre-deposit from the Electronic Cash Register of the petitioner, the Appellate Authority shall dispose of the appeal on merits and in accordance with law without reference to the limitation.

7.It is needless to state that the petitioner shall be heard before the appeal is disposed of on merits. In case, any amount has already been paid by the petitioner, the same shall be treated as part of pre-deposit, as it required under Section 107 of the respective GST enactment.

8.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
mm

12.07.2024

C.SARAVANAN, J.

mm

W.P.(MD) No.15501 of 2024

12.07.2024