BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18600 of 2019
&
W.M.P(MD).No.14982 of 2019

M/s.GM Constructions
Rep by its Proprietor
Mr.Arun Gowtham
73 A, II East Main Road
Anna Nagar
Madurai-625 020 ... Petitioner

Vs.

The Superintendent
Office of the Superintendent of
Central GST & Central Excise
North Range Madurai II Division
Madurai-625 002 ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the records on the files of the respondent in ORDER IN ORIGINAL No.06/2019 (GST) dated 18.0.2019 and quash the same as illegal, against the intention of the Legislature and frustrates the object sought to be achieved by the Legislatures by enacting the Central Goods and Services Act, 2017 and

Tamil Nadu Goods and Services Act, 2017.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.N.Dilip Kumar, Standing Counsel

ORDER

Writ Petition is filed for issuance of a Writ of Certiorari to call for the records on the files of the respondent in ORDER IN ORIGINAL No. 06/2019 (GST) dated 18.0.2019 and quash the same as illegal, against the intention of the Legislature and frustrates the object sought to be achieved by the Legislatures by enacting the Central Goods and Services Act, 2017 and Tamil Nadu Goods and Services Act, 2017.

2. Although, learned counsel for the petitioner would submit that the petitioner has utilized the tax paid on input services used in connection with the works contract provided by the petitioner and that the petitioner has paid the tax at 12% and the impugned order seeking to deny input tax credit is without any merits and therefore the impugned order is liable to be set aside.

3. I am of the view that the issue would require a detailed consideration by the authority as there are several disputed question of

fact surrounding availing and utilization of input tax credit and the denial of the input tax credit. The onus is on the petitioner to prove that the exception in Sec.17(5)(c) is not attracted. The petitioner should produce proper evidence before the appellate authority. Petitioner may also rely on the rulings of the advance authority although not binding may have a persuasive value. Considering the same, the present Writ Petition is disposed by giving liberty to the petitioner to file a statutory appeal before the Appellate authority U/s.107 of the CGST Act, 2017 within a period of 30 days from the date of receipt of a copy of this order.

4. Since the limitation for filing the appeal would have already expired, the Appellate Commissioner viz., Additional Commissioner of GST and Central Excise Appeal II shall entertain the appeal and dispose the appeal on merits in accordance with law within a period of 90 days from the date of receipt of a copy of this order, provided the petitioner files such appeal within a period of 30 days from the date of receipt of a copy of this order after complying with the requirement of pre deposit U/s. 107 of CGST Act,2017.

C.SARAVANAN, J.

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Writ Petition is disposed of with the above observation. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

15.04.2024.

Index: Yes/ No
Neutral Citation: Yes / No
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Copy To:
The Superintendent
Office of the Superintendent of
Central GST & Central Excise
North Range Madurai II Division
Madurai-625 002

W.P.(MD) No.18600 of 2019