IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22475 of 2022
and W.M.P.No.21510 of 2022

M/s.Ceedeeyes Infrastructure Solutions Pvt. Ltd.
Rep. by its Director Mr.Brunth Devadasa Sundar,
No.42, Park Wood Apartment, 2nd Main Road,
Gandhi Nagar, Adyar,
Chennai – 600 020.

...Petitioner

Versus

The Assistant Commissioner of GST & Central Excise,
Adyar Division, Chennai South Commissionerate,
No.692, MHU Complex, 3rd Floor, Nandanam,
Anna Salai, Chennai – 600 035.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records relating the Show Cause Notice No.03/2022 – GST dated 11.07.2022 issued by the respondent and to quash the same as contrary to law, contrary the decision of the Hon'ble Orissa High Court reported in 2019 (12) TMI 413-HC-DB and arbitrary.

For Petitioner	:	Mr.M.A.Mudimannan
For Respondent	:	Mr.K.Umesh Rao, Senior Standing Counsel

ORDER

In this writ petition, the Petitioner has challenged the Show Cause Notice No.03/2022-GST dated 11.07.2022 issued by the Respondent herein.

2. By the impugned Show Cause Notice dated 11.07.2022, the Respondent had proposed the following demands against the Petitioner:

*"14. **Demand:***

Now, therefore, M/s.Ceedeeyes Infrastructure Solutions Private Limited located at No.42, Park Wood Apartment, 2nd Main Road, Gandhi Nagar, Adyar – 20 and having GSTIN 33AACCC6317K1ZS, is hereby called upon to show cause to the Deputy/Assistant Commissioner of GST and Central Excise, Adyar Division, Chennai South Commissionerate, No.692, MHU Complex, 3rd Floor, Anna Salai, Nandanam, Chennai – 600 035 within 30 days of the receipt of the Show Cause Notice as to why:-

(i) an ITC amount wrongly availed and utilized to the tune of Rs.1,04,15,735/- (IGST-Rs.4,34,365/-, CGST-Rs.49,76,136/- and SGST-Rs.50,05,234/-) during the period from 2017-18 to 2019-20 should not be demanded under Section 74(1) of the CGST Act, 2017;
(ii) an appropriate interest should not be demanded, under Section 50 of the CGST Act, 2017 read with Section 74(1) of the CGST Act, 2017 on the tax amount mentioned in clause (i) above;
(iii) penalty equivalent to the tax demanded in clause (i) above should not be imposed upon under section 122(2)(b) of the CGST Act, 2017 read with Section 74(1) of the CGST Act, 2017;
(iv) a tax amount of Rs.14,46,873/- (CGST – Rs.7,23,436/- and SGST – Rs.7,23,436/-) not paid under reverse charge mechanism on the remuneration paid to the Directors during the period from 2017-18 to 2019-20, should not be demanded under Section 74(1) of the CGST Act, 2017 read with Section 9(3) of the CGST Act, 2017;
(v) an appropriate interest should not be demanded under Section 50 of the CGST Act, 2017 read with Section 74(1) of the CGST Act, 2017 on the tax amount mentioned in clause (iv) above;
(vi) penalty equivalent to the tax demanded in clause (iv) above should not be imposed upon under section 122(2)(b) of CGST Act, 2017 read with

Section 74(1) of the CGST Act, 2017;
(vii) a tax amount of Rs.70,090/- (CGST – Rs.35,045/- and SGST – Rs.35,045/-) short paid due to mis-declaration of taxable value in GST returns during the period from 2017-18 to 2019-20 should not be demanded under Section 74(1) of the CGST Act, 2017.
(viii) an appropriate interest should not be demanded under Section 50 of the CGST Act, 2017 read with Section 74(1) of the CGST Act, 2017 on the tax amount mentioned in clause (vii) above;
(ix) penalty equivalent to the tax demanded in clause (vii) above should not be imposed under Section 122(2)(b) of the CGST Act, 2017 read with Section 74(1) of the CGST Act, 2017;

15. The taxpayer should produce at the time of showing cause, evidence, documentary or otherwise, upon which they intend to rely in support of their defence. They should also mention in their written explanation whether they wish to be heard in person or through their legal representative/counsel before adjudication of the case. If no such mention is made in their written explanation, it will be presumed that they do not wish to be heard in person.
16. The taxpayer should also note that if no cause is shown against the action proposed to be taken within the stipulated period of 30 days or if they do not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence already available on record.
17. This show cause notice is issued without prejudice to any other or further action that may be taken against the taxpayer, either in this case or any other case under the provisions of CGST Act, 2017 and the Rules made thereunder or any other law for the time being in force."

3. The specific case of the Petitioner is that the Petitioner was issued with a notice in Form DRC-01A dated 23.06.2022 by the Respondent, directing the Petitioner to pay the demanded tax amount along with applicable interest and penalty under Section 74(5) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") by 01.07.2022.

4. In response to the said notice in Form DRC-01A dated

23.06.2022, the Petitioner sent its detailed Reply dated 05.07.2022. However, without considering the Petitioner's reply, the Respondent has issued the impugned Show Cause Notice dated 11.07.2022 to the Petitioner demanding the aforesaid amount as tax due from the Petitioner.

5. I have heard the learned counsel for the Petitioner as well as the learned Senior Standing Counsel for the Respondent and I have also perused the materials available on record.

6. When there is any unpaid or short-paid tax or incorrect ITC claims by a taxpayer, the Revenue Department will issue a pre Show Cause Notice i.e., Form DRC-01A under Section 73 or Section 74 of the CGST Act to the taxpayer, demanding to pay the tax due. If the taxpayer does not agree to pay the demanded tax, then the Revenue Department will issue a Show Cause Notice or Form DRC-01 to the taxpayer.

7. As far as this case is concerned, the Petitioner has filed this writ petition at a premature stage itself since the impugned Show Cause Notice dated 11.07.2022 was issued to the Petitioner only after the issuance of

Form GST DRC-01A dated 23.06.2022. As such, the challenge made to the Show Cause Notice dated 11.07.2022 is not maintainable under Article 226 of the Constitution of India. Hence, this writ petition is liable to be dismissed.

8. Accordingly, this Writ Petition is dismissed. However, liberty is granted to the Petitioner to file its Reply to the Show Cause Notice dated 11.07.2022, within a period of 30 days from the date of receipt of a copy of this order. On filing of such reply by the Petitioner, the Respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, within a period of three months, after affording an opportunity of personal hearing to the Petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

22.01.2025

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

The Assistant Commissioner of GST & Central Excise,
Adyar Division, Chennai South Commissionerate,
No.692, MHU Complex, 3rd Floor, Nandanam,
Anna Salai, Chennai – 600 035.

C.SARAVANAN, J.

mrr

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