IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-06-2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.5694 of 2019
And
W.M.P.Nos.6484 and 6489 of 2019

M/s.Sowmiya Spinners (P) Ltd.,
Represented by its Managing Director
Mr.K.M.Chinnadorai,
Door No.6/203, S.F.No.525,
Kovai Road, Kariyampalayam Post,
Coimbatore-641 653,
Coimbatore District. .. Petitioner

..Vs..

The Superintendent,
Office of the Superintendent of GST & Central Excise,
Annur Range,
No.24, Aghraharam Street,
Annur,
Coimbatore-641 653,
Coimbatore District. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in O.C.No.804/2018 dated 21.12.2018 served on 3.1.2019 and quash the same.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondent : Mr.Rajnish Pathiyil,
Senior Panel Counsel.

ORDER

Mr.A.N.R.Jayaprathap, learned counsel on record for writ petitioner and Mr.Rajnish Pathiyil, learned Senior Panel Counsel for sole respondent, are before this Court.

2. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

3. In the light of the trajectory which the hearing has taken in the Court today, the entire matter now turns on a very narrow compass.

4. The facts in a nutshell shorn of unnecessary details and particulars or in other words minimum facts imperative for appreciating this order are that writ petitioner is a Registered Dealer under the provisions of 'The Central Goods and Services Tax Act, 2017' ('CGST Act' for brevity), that there was a delay on the part of writ petitioner in filing Returns for the month of June 2017 and these returns are referred to as 'ER-1 Returns'. This Court is informed that 'ER' is an abbreviation which stands for 'Excise Returns'. It is also not disputed that 'ER-1' for the month of June 2017 was belatedly filed on 29.12.2018.

5. It is the case of writ petitioner that he has remitted

penalty being penalty of Rs.20,000/-. However, this Court does not express any opinion on merits and it refrains from expressing any opinion on the merits of the matter in the light of the order that is now being passed.

6. The impugned communication, which has been called in question, is a letter dated 21.12.2018, bearing Reference O.C. No.804/2018 from the sole respondent to the writ petitioner.

7. Adverting to the impugned communication, learned Revenue Counsel submits that this is only a communication and as the writ petitioner has now raised a dispute and as the writ petitioner now says that he has submissions to be made on merits, the respondent would issue a 'Show Cause Notice' (hereinafter referred to as 'SCN'), more particularly, a notice, within the meaning of Section 73 of CGST Act. This is submission of the learned Revenue Counsel, on instructions.

8. To be noted, aforementioned submission of learned Revenue Counsel is articulated in the counter-affidavit of the sole respondent. Relevant paragraph is paragraph-9, which reads as under:

'9. In so far as the allegations raised in Ground

'[i]' are concerned, it is submitted that the Communication under O.C.No. 804/2018 is only advisory in nature as the GST laws are implemented recently and issuance of notice under Section 73 would be harsh. Therefore, it is not correct to project the Communication as an order issued without a Show Cause Notice or without affording an opportunity of hearing to the Petitioner. Consequently, it is also incorrect to state that there is violation of principles of natural justice or error of jurisdiction.'

9. Learned Revenue Counsel, submits, on instructions, that the aforesaid 'SCN' will be issued within four weeks from the date of receipt of a copy of this order.

10. Learned counsel for writ petitioner draws the attention of this Court to paragraph-3 of the impugned communication, which reads as follows:

'03. In this regard, you are requested to reverse the wrongly credited amount of Rs.26,60,637/- along with payment of appropriated interest and compliance report may please be submitted to this office at the earliest.'

11. In the light of narrative supra, in the considered view of this Court, it is imperative that the aforesaid paragraph-3 of the impugned communication is kept in abeyance till the aforesaid 'SCN' attains finality as implementation of paragraph-3 will render

the entire exercise post SCN infructuous.

12. Therefore, paragraph-3 of impugned communication (extracted and reproduced supra) shall be kept in abeyance till the SCN (to be issued) attains finality.

13. This writ petition is disposed of on above terms. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19-06-2019

Index:Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
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To

The Superintendent,
Office of the Superintendent of GST & Central Excise,
Annur Range,
No.24, Aghraharam Street,
Annur,
Coimbatore-641 653,
Coimbatore District.

M.SUNDAR, J.

Svn

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