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W.P.No.11191 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.11191 of 2022
and W.M.P.No.10767 of 2022

M/s.Mahendra Feeds and Foods
(Trading Division), Rep.by its
Managing Partner V.Palanisamy
Kadhapalli Road, Mualaipatti
Namakkal – 737 003.

.... Petitioner

-Vs-

The Deputy Commissioner of GST
and Central Excise, Salem II Division
Salem-636 007.

.... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records leading to the issuance of order-in-original bearing reference DIN-20220359XP0000666C44 dated 30.03.2022 by the respondent herein, and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.K.Mohana Murali
Senior Panel Counsel



W.P.No.11191 of 2022

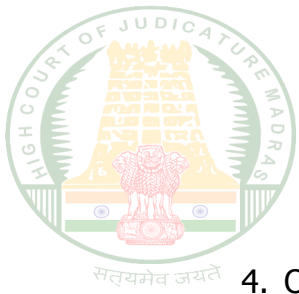
ORDER

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The prayer sought for herein is for a Writ of Certiorari calling for the records leading to the issuance of order-in-original bearing reference DIN-20220359XP0000666C44 dated 30.03.2022 by the respondent herein, and quash the same.

2. The petitioner is a dealer under the GST regime. He has availed Input Tax Credit (ITC) for the Financial Year 2017-18 and 2018-19 from December 2017 to March 2019. But, according to the Revenue, the ITC claimed by the petitioner was a wrong claim because, there was a complete mismatch between the supplier and the petitioner who was in the receiving end, as the supplier, in support of its outward tax has not paid the tax or not shown the same in their accounts, as if that they paid the tax. Therefore, a show cause notice was issued and it has been replied. Considering the said reply, the order-in-original has been passed by the impugned order dated 30.03.2022.

3. Challenging the impugned order, Mr.Adithya Reddy learned counsel for the petitioner has submitted that, under Section 42(3) of the GST Act there is an obligation on the part of the Revenue to communicate to both the supplier and the dealer who received the goods by way of input supply about the mismatch of ITC as the supplying dealer has not paid the output tax at their end.

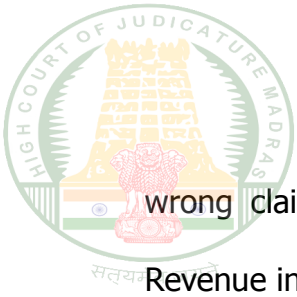


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4. Once such a communication is issued under the Rule in consonance with Section 42(3) of the Act, there must be a procedure to be followed, where some communication should have been given at the earliest point of time if at all anything to be rectified. However since no such communication has been issued and they issued the show cause notice, which has also been responded by the petitioner saying that the supplying dealer has paid the tax, the same has not been accepted by the Revenue and therefore, it is a procedural violation. Hence, on that ground the learned counsel for the petitioner wants to assail the impugned order successfully.

5. Heard Mr.K.Mohana Murali learned Senior Panel Counsel appearing for the respondent Revenue, who submitted that, the show cause notice issued to the petitioner itself is a communication within the meaning of Section 42(3) of the Act as at this juncture since mismatch was found by the Revenue, the same can be communicated only by way of show cause notice and if at all the petitioner wants to rectify it, by rectifying the same, reply could have been given with substantiated documents to show that the supplier has paid the tax at their end.

6. In the absence of any such documents being produced by the petitioner to by way of reply to the show cause notice, it can very well be construed that the mismatch has not been rectified. Therefore, the ITC claimed by the petitioner was a



W.P.No.11191 of 2022

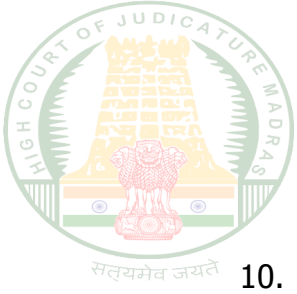
wrong claim and accordingly the same can be reversed. That was done by the Revenue in the impugned order and hence it has to be sustained, he contended.

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7. I have heard the submissions made by the learned counsel on either side and have perused the materials placed on record.

8. As has been rightly pointed out by Mr.K.Mohana Murali, learned Senior Panel Counsel appearing for the Revenue, the rectification would be possible at the hands of the petitioner who was the dealer who received the goods by way of input supply, at least at the time of receipt of show cause notice issued in this regard by the Revenue.

9. After receipt of the show cause notice, if at all the petitioner wants to rectify the mismatch between the petitioner and the supplying dealer, the supporting documents to substantiate that the output tax had been paid by the supplying dealer at their end should have been procured and filed along with the reply submitted by the petitioner, which they failed to do. Therefore, the technical reason that under Section 42(3) it should have been communicated at the earliest point of time and therefore the show cause notice cannot be treated as communication intimating the mismatch between the supplier and the petitioner, cannot be countenanced. Therefore, on that ground this Court feels that the impugned order cannot be successfully challenged.



W.P.No.11191 of 2022

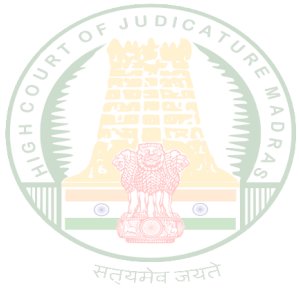
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10. In that view of the matter, this Court is not inclined to entertain this writ petition and it is liable to be dismissed. Accordingly, the writ petition is dismissed, however with a liberty to challenge the impugned order before the appellate authority in the manner known to law. No costs. Consequently, connected miscellaneous petition is also dismissed.

29.04.2022

Index : Yes/No
Internet : Yes/No
KST
To

The Deputy Commissioner of GST
and Central Excise, Salem II Division
Salem-636 007.



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W.P.No.11191 of 2022

R. SURESH KUMAR, J.

KST

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