

Tvl. Shivam Steels vs Assistant Commissioner (St)(Fac) on 25 June, 2024

Author: Senthilkumar Ramamoorthy

Bench: Senthilkumar Ramamoorthy

W.P.No.153

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15335 of 2024
and W.M.P.Nos.16659 & 16661 of 2024

Tvl. Shivam Steels
(Represented by its Proprietor Mr.Gyan Manchanda)
No.2-309, Ground Floor, Opp. G.P.T.Petrol Bunk,
N.B.Agraharam Village,
Hosur, Krishnagiri 635 109.

... Peti

-vs-

Assistant Commissioner (ST)(FAC),
Hosur (South)-III Assessment Circle,
Commercial Tax Buildings,
Ground Floor, Seetharam Medu,
Near Old Bus Stand, Hosur 635 109.

... Respon

PRAYER: Writ Petition filed under Article 226 of the Constitution of
India, pleaded to issue a Writ of Certiorari, calling for the record
relating to passing of the impugned order bearing Ref.No. GSTIN

1/10

<https://www.mhc.tn.gov.in/judis>

33ACRPM2806R1Z0/2019-20 dated 12.03.2024, along with summary of the order in Form DRC-7 bearing Ref.No. ZD3303240685298 dated 13.03.2024 (for the year 2019-20), passed by the respondent and quash the demand of tax of Rs.25,88,468/- each under CGST and SGST along with interest and penalty as the same being arbitrary, without the authority of law, passed in violation of the principles of natural justice and beyond the scope of the show cause notice.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.C.Harsha Raj, AGP (T)

ORDER

By this writ petition, an order in original dated 12.03.2024 is assailed only insofar as it pertains to defect no.3. <https://www.mhc.tn.gov.in/judis>

2. The petitioner received show cause notice dated 12.01.2024 calling upon the petitioner to show cause with regard to six defects. The petitioner replied to such show cause notice on 22.01.2024 and 14.02.2024. The order impugned herein was issued thereafter.

3. Learned counsel for the petitioner submits that defect no.3 pertains to reversal of Input Tax Credit in respect of credit notes issued by the supplier. By referring to sub-section (3) of Section 15 of applicable GST statutes, learned counsel submits that the value of supply would not include a discount only if the conditions prescribed in clauses (a) or (b) of sub-section (3) are satisfied. According to him, the case at hand does not fall within the scope of sub-section (3). Consequently, he contends that the credit notes issued by the supplier were financial credit notes. He also refers to Circular No.92/11/2019-GST dated 07.03.2019 to substantiate the above contention. Hence, the recipient / tax payer is not liable to reverse Input Tax Credit to the extent of the value of credit notes. <https://www.mhc.tn.gov.in/judis>

4. By referring to the relevant part of the impugned order, learned counsel submits that the discount offered by the supplier was erroneously construed as a service provided by the purchaser to the supplier. Consequently, he contends that the impugned order calls for interference on this issue.

5. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He points out that the petitioner has filed this writ petition only insofar as defect no.3 is concerned. As regards other defects, he submits that the petitioner has carried the matter in appeal before the appellate authority. Learned Additional Government Pleader contends that such practice should not be encouraged. Therefore, he submits that the petitioner should be relegated to the statutory remedy.

6. Sub-section (3) of Section 15 of applicable GST statutes provides for a reduction in the value of supply, on account of a <https://www.mhc.tn.gov.in/judis> discount, if such discount has been duly recorded in the invoice issued in respect of such supply or if such discount is established in terms of an agreement entered into either before or at the time of supply although the supply may be subsequent to such agreement. In this case, the petitioner has prima facie established that neither of the requirements under sub-section (3) were satisfied. In such event, the supplier would be liable to pay tax on the full value of supply.

7. On examining the impugned order, the following conclusion was recorded in respect of defect no.3:

“I have carefully gone through the objection/reply filed by the taxable person and also perused the connected records. On examination of the documents it is noticed that the discount has been received after the sale was effected by the taxable person. The word discount received is nothing but an amount received from the supplier in the name of discount to increase the volume of sale during the year. In other words, the amount is related to good performance done by the taxable person by way of increasing the sale and thereby to boost the total turnover of the supplier / company, which resulted in increase in goodwill of the company and also helps the company to market their products and if the company is in the <https://www.mhc.tn.gov.in/judis> stock market the value of the share of the company will automatically goes up. The taxable person in this end by performing a good sale have provided a service to the supplier and the supplier / company got the benefit of goodwill and sound marketability in the trading world.” The above extract discloses that the assessing officer concluded that the taxable person is providing a service to the supplier while taking the benefit of a discount by facilitating an increase in the volume of sales of such supplier. This conclusion is ex facie erroneous and contrary to the fundamental tenets of GST law. Therefore, this conclusion warrants interference and this issue requires re-

consideration.

8. The contention of learned Additional Government Pleader remains to be considered. The exercise of jurisdiction under Article 226 is discretionary and subject to self imposed fetters. One such fetter is when an efficacious alternative remedy is available. It should be borne in mind that the existence of an alternative remedy is a material consideration but not a bar to the exercise of jurisdiction. <https://www.mhc.tn.gov.in/judis> In the case at hand, on the basis that the other issues require re-

appraisal of evidence, the petitioner has approached the appellate authority in respect thereof. As regards this issue, since it is a pure legal issue, the petitioner has chosen to approach this Court. As recorded earlier, the conclusion is ex facie erroneous on this issue, and the appellate authority under applicable GST statutes does not have the power to remand. Therefore, notwithstanding the fact that the petitioner had approached the appellate authority in respect of other issues, I am inclined to exercise jurisdiction. It is needless to say that a writ petition would not ordinarily be entertained once the person aggrieved has chosen to challenge other issues in an order before an appellate authority.

9. For reasons set out above, impugned order dated 12.03.2024 is set aside only insofar as defect no.3 relating to reversal of Input Tax Credit for the value of credit notes issued by the supplier is concerned. As a corollary, defect no.3 is remanded for re- <https://www.mhc.tn.gov.in/judis> consideration by the original authority. After providing a reasonable opportunity to the petitioner, including a personal hearing, the assessing officer is directed to issue a fresh order within three months from the date of receipt of a copy of this order.

10. W.P.No.15335 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.16659 and 16661 of 2024 are closed.

25.06.2024 (1/2) rna Index : No Internet : Yes Neutral Citation: No To <https://www.mhc.tn.gov.in/judis> Assistant Commissioner (ST)(FAC), Hosur (South)-III Assessment Circle, Commercial Tax Buildings, Ground Floor, Seetharam Medu, Near Old Bus Stand, Hosur 635 109.

SENTHILKUMAR RAMAMOORTHY,J rna <https://www.mhc.tn.gov.in/judis> and W.M.P.Nos.16659 & 16661 of 2024 25.06.2024 (1/2) <https://www.mhc.tn.gov.in/judis>