

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. No.6631 of 2021
and WMP No.7188 of 2021

- 1 M/s.F1 Auto Components P ltd
Rep by its Managing Director No.150 and 151
12th Main Road SIDCO Industrial Estate
Thirumudivakkam Chennai-600 044

.... Petitioner

Vs.

- 1 The State Tax officer
Survey Cell-1 Intelligence-II
Chennai-600 123

.... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records of the respondent in his proceedings in GST INS - 01/ 102 / 2020-2021/ Survey- 1 / Investigation-II quash the order dated 27.1.2021 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondents: Mr.TNC.Kaushik
Government Advocate

ORDER

Heard Mr.P.V.Sudakar, learned counsel for the petitioner and Mr.TNC.Kaushik, learned Government Advocate for the respondent.

2. Though no counter is filed, the challenge involves only a legal issue and there are no disputed questions of fact. Learned revenue counsel is thus armed with instructions to proceed with the hearing of the matter.

3. The challenge is to order dated 27.01.2021 levying interest under Section 50 of the Central Goods and Services Tax Act, 2017 (in short 'Act') relating to both interest on cash remittances as well as remittances by way of adjustment of electronic credit register.

4. As far as the second limb of the levy is concerned, it is covered by a decision in the case of *Maansarovar Motors Private Limited V. The Assistant Commissioner, Poonamallee Division, Chennai* (W.P.Nos.28437 of 2019 etc. batch, order dated 29.09.2020). Both learned counsel concur on the position that in the light of the aforesaid decision, the levy to this extent is to be set aside and it is hence accordingly set aside.

5. As far as levy of interest on cash remittance is concerned, learned counsel for the petitioner only relies on the provisions of Section 42 of the Act which provides for a notice to be issued by the Assessing Authority in the case of mismatch of particulars at the end of the assessee, vis-a-vis, particulars/details furnished in the returns of the selling/purchasing dealer.

6. In this case, the provisions of Section 42 are not relevant, insofar as the impugned order itself records that the assessee has, on receipt of intimation of the wrongful claim of input tax credit (ITC), accepted the error in claim and has reversed ITC, both attributable to CGST and SGST through voluntary payment of tax in Form GST DRC-03.

7. The provisions of Section 42 can only be invoked in a situation where the mismatch is on account of the error in the database of the revenue or a mistake that has been occasioned at the end of the revenue. In a case where the claim of ITC by an assessee is erroneous, as in this case, then the question of Section 42 does not arise at all, since it is not the case of mismatch, one of wrongful claim of ITC.

8. As far as the levy of interest on belated cash remittance is concerned, it is compensatory and mandatory and the levy is upheld to this extent.

Dr.ANITA SUMANTH,J.

9. The impugned order is modified to the extent as indicated above and this Writ Petition stands disposed. No costs. Connected Miscellaneous Petition is closed.

09.07.2021

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Index: Yes/no
Speaking/non-speaking order

To

- 1 The Government of India
Rep by its Secretary Ministry of Finance
Jeevan Deep Building Sansad Marg New Delhi- 110001
- 2 The Principal Commissioner of Income Tax
121 M.G.ROAD Nungambakkam, Chennai- 34
- 3 The Income Tax officer सत्यमेव जयते
Non Corporate Ward- 19(2) Chennai
121 M.G.ROAD Nungambakkam Chennai- 34
- 4 The Income tax officer
Non- Corporate Ward- 10(3) chennai
121 M.G.ROAD Nungambakkam Chennai- 34

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