

2024 (85) G.S.T.L. 401 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[MADURAI BENCH]

C. Saravanan, J.

FIRST CHOICE OUTSOURCING SERVICES

Versus

JOINT COMMISSIONER OF GST & C. EX., TRICHY

W.P. (MD) No. 9302 of 2024 and W.M.P. (MD) Nos. 8490 & 8492 of 2024, decided on 16-4-2024

Advance Ruling - Procedure of application case was initiated on 12-11-2020 by Headquarter Preventive Unit of GST Commissionerate - A DRC-01A, dated 15-6-2023 was issued by Headquarter Preventive Unit, which consequently resulted in issuance of show cause notice dated 30-6-2023 which involved issues of short declaration of taxable outward supply availment and utilization of ineligible input tax credit, excess availment of input tax credit etc. - Assessee filed an application for advance ruling before AAR on 5-7-2023 after issuance of said show cause notice - Show cause notice culminated in impugned order of Jt. Commissioner dated 14-2-2024 - Second respondent had now dismissed application for advance ruling citing first proviso to Section 98(2) of CGST Act, 2017 - *HELD* : There is no dispute that subject matter of show cause notice dated 30-6-2023, which had culminated in order of Jt. Commissioner dated 14-2-2024, was subject matter, in respect of which assessee wanted a clarification by filing an advance ruling application before AAR on 5-7-2023, which had culminated in order passed by AAR dated 26-2-2024 - Therefore, challenge to order passed by AAR on 26-2-2024 could not be countenanced - Section 98 of Central Goods and Services Tax Act, 2017 - Section 98 of Tamil Nadu Goods and Services Tax Act, 2017. *[para 6]*

Appeals to Appellate Authority - Writ jurisdiction - Case was initiated on 12-11-2020 by Headquarter Preventive Unit of GST Commissionerate - A DRC-01A, dated 15-6-2023 was issued by Headquarter Preventive Unit, which consequently resulted in issuance of show cause notice dated 30-6-2023 which involved issues of short declaration of taxable outward supply availment and utilization of ineligible input tax credit, excess availment of input tax credit etc. - By impugned order dated 14-2-2024, Jt. Commissioner had confirmed a number of amounts as due and payable by assessee - As far as challenge to impugned Order-in-Original passed by Jt. Commissioner was concerned, assessee had an alternate remedy before Commissioner under Section 107(2) of GST Act, 2017 - Assessee should file an appeal before Appellate Commissioner above within period of limitation - Section 107 of Central Goods and Services Tax Act, 2017 - Section 107 of Tamil Nadu Goods and Services Tax Act, 2017. *[paras 7 and 8]*

Petition dismissed in favour of department

CASE REVIEW

First Choice Outsourcing Services — (2024) 17 Centax 359 (A.A.R. - GST - T.N.) — **Affirmed**
[Paras 2, 5, 6]

REPRESENTED BY : Shri R. Murugan, for the Petitioner.

Shri N. Dilip Kumar, Standing Counsel, for the Respondent.

[Order]. - Heard Mr. R. Murugan, Learned Counsel for the petitioner and Mr. N. Dilip Kumar, Learned Standing Counsel for the respondents.

2. The petitioner has challenged the Order-in-Original No. 24/2023-24, dated 14-2-2024 passed by the first respondent/the Joint Commissioner, Office of Commissioner of GST and Central Exercise, Trichy and the order dated 26-2-2024 passed by the second respondent, namely the Authority for Advance Ruling under the provisions of the respective GST enactments.

3. By the impugned order of the first respondent dated 14-2-2024, the first respondent has confirmed the following amounts as due and payable by the petitioner.

“(i) I confirm the demand of an amount of Rs. 3,36,59,502/- (Rupees Three Crore Thirty-Six Lakh Fifty-Nine Thousand Five Hundred and Two Only) (CGST - Rs. 1,68,29,751/- SGST - Rs. 1,68,29,751/-) as against the demand of Rs. 4,68,25,905/-, towards short-payment of GST amount during the period July, 2017 to March, 2021 from M/s. First Choice Outsourcing Services, Trichy under Section 74(9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017.

(ii) On re-quantification of demand of Rs. 4,68,25,906/-, towards short-payment of GST amount during the period July, 2017 to March, 2021, the demand gets reduced to Rs. 3,36,50,502/-. Consequently the differential demand of Rs. 1,31,66,404/- is dropped.

(iii) I appropriate an amount of Rs. 98,09,572/ (CGST Rs. 49,04,786/- & SGST Rs. 49,04,786/-) already paid through DRC-03 Challans as detailed in para 14-3.5 above, towards the demand confirmed at Sl. No. (1) above.

(iv) I confirm the demand of an amount of Rs. 29,71,455/- (Twenty-Nine Lakh Seventy-One Thousand Four Hundred and Fifty-Five Only) (IGST Rs. 58,591/-, CGST Rs. 14,76,432/- and SGST - Rs. 14,76,432/-) towards availment and utilization of Ineligible ITC beyond the due date stipulated in Section 16(4) during the period January, 2019 to March, 2019 and November, 2019 to March, 2020 from M/s. First Choice Outsourcing Services, Trichy under Section 73(9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act, 2017.

(v) I confirm an amount of Rs. 42,10,385/- (Forty-Two Lakh Ten Thousand Three Hundred and Eighty-Five Only) (IGST Rs. 6,377/-, CGST Rs. 21,02,004/-, SGST - Rs. 21,02,004/-) towards availment and utilization of ineligible ITC on account of difference between GSTR-2A and GSTR-3B Returns during the period November, 2018 to March, 2021 from M/s. First Choice Outsourcing Services, Trichy under Section 16(2) read with Section 73(9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act, 2017.

(vi) I confirm an amount of Rs. 55,64,344/- (Fifty-Five Lakh Sixty-Four Thousand Three Hundred and Forty-Four Only) (CGST - Rs. 27,82,172/- and SGST - Rs. 27,82,172/-) towards availment

and utilization of Fraudulent ITC availed and utilized on strength of alleged fake Invoices during the period January, 2020 to March, 2021 from M/s. First Choice Outsourcing Services, Trichy under Section 16 read with Section 74(9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act, 2017.

(vii) I confirm an amount of Rs. 18,45,065/- (Eighteen Lakh Forty-Five Thousand and Sixty-Five Only) (CGST - Rs. 9,22,532/-, SGST - Rs. 9,22,533/-) towards availment and utilization of wrong ITC availed and utilized on their own Invoices during the period January, 2020 to March, 2021 from M/s. First Choice Outsourcing Services, Trichy under Section 16 read with Section 73(9) of CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act, 2017

(viii) Interest at appropriate rate is demanded from M/s. First Choice Outsourcing Services, Trichy on the GST demand confirmed in Sl. Nos. (i), (iv), (v), (vi) and (vii) above, under the provisions of Section 50 of the CGST Act, 2017 read with the corresponding provisions of the TNGST Act, 2017 read with Section 20 of the IGST Act, 2017

(ix) I impose a penalty equal to the amount of Rs. 3,36,59,502/ (CGST Rs 1,68,29,751/ SGST Rs. 1,68,29,751/-) against the short payment of tax confirmed at Sl. No. (i) above on M/s. First Choice Outsourcing Services, Trichy, under Section 74(9) read with corresponding provisions of TNGST Act, 2017.

(x) I impose a penalty equal to the amount of Rs. 55,64,344/-(CGST - Rs. 27,82,172/- and SGST Rs. 27,82,172/-) against fraudulent ITC availed on fake invoices confirmed at Sl. No. (vi) above on M/s. First Choice Outsourcing Services, Trichy under Section 74(9) read with corresponding provisions of TNGST Act, 2017.

(xi) I impose a penalty of Rs. 9,20,194/ (IGST Rs. 20,000/-, CGST - Rs. 4,50,097/- and SGST Rs. 4,50,097/-) in respect of demand confirmed at Sl. Nos. (iv), (v) and (vii) above on M/s. First Choice Outsourcing Services, Trichy, under Section 73(9) read with corresponding provisions of TNGST Act, 2017 and Section 20 of IGST Act, 2017.

(xii) I refrain from imposing any penalty on M/s. First Choice Outsourcing Services, Trichy, under section 122(1)(iii) of the CGST Act, 2017 and corresponding provisions of TNGST Act, 2017 for the reasons narrated in para 14.7.4 above.

(xiii) I refrain from imposing any penalty on M/s. First Choice Outsourcing Services, Trichy, under section 122(2)(b) of the CGST Act, 2017 and corresponding provisions of TNGST Act, 2017 for the reasons narrated in para 14.7.4 above

(xiv) I impose a penalty of Rs. 1,00,000/- (IGST - Rs. 50,000/-, CGST - Rs. 25,000 & SGST - Rs. 25,000/-) on Shri Selvakumar Pitchai, Managing Partner, M/s. First Choice Outsourcing Services, under Section 122(3)(a) and corresponding provisions of TNGST Act, 2017, read with Section 20 of IGST Act, 2017.

(xv) I impose a penalty of Rs. 1,00,000/- (IGST - Rs. 50,000/-, CGST Rs. 25,000 & SGST - Rs. 25,000/-) on Shri Yogaraja Rajaman? ckam (sic), Partner, M/s. First Choice Outsourcing Services, under Section 122(3)(a) and corresponding provisions of TNGST Act, 2017, read with Section 20 of IGST Act, 2017.

(xvii) M/s. First Choice Outsourcing Services, Trichy are also informed that in terms of Section 74(11) of the Central Goods and Services Tax Act, 2017 and corresponding provisions of TNGST Act, 2017, where goods and services tax and applicable Interest are paid within a period of thirty days from the date of communication of this order passed under the sub-section (9) of Section 74 and corresponding provisions of TNGST Act, 2017, the penalty shall be 50 percent of such goods and services tax and proceedings in respect of goods and services tax, Interest and penalty shall be deemed to be concluded, provided the said reduced amount of penalty is also paid within the said thirty (30) days."

“7.13 The applicant was issued with a show cause notice dated 30-6-2023 which involves issues of short declaration of taxable outward supply availment and utilization of ineligible input tax credit, excess availment of input tax credit etc. It is a fact that the case was initiated on 12-11-2020 by the Headquarter Preventive Unit, Trichy GST Commissionerate and a DRC-01A, dated 15-6-2023 was issued by the Headquarter Preventive Unit, Trichy GST Commissionerate which consequently resulted in issuance of show cause notice dated 30-6-2023”

“98. Procedure on receipt of application. -

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application”

7. As far as the challenge to the impugned Order-in-Original dated 14-2-2024 Order-in-Original No. 24/2023-24 passed by the first respondent is concerned, the petitioner has an alternate remedy before the Commissioner under Section 107(2) of the GST Act, 2017, which reads as under :-

“107. Appeals to Appellate Authority. -

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9. No costs. Consequently, connected Miscellaneous Petitions are closed.