



W.P.No.27776 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 23.09.2024

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

**W.P.No.27776 of 2024 &
WMP.Nos.30287 & 30288 of 2024**

Uno Minda Limited (Seating Division)
represented by its authorised Signaory
Mr.V.Vasudevan,
Thally Main Road, Belagondapalli
Village and Post, Denkanikottai Taluk,
Krishnagiri, Tamil Nadu 635 114.

... Petitioner

Vs.

The Joint Commissioner of GST and
Central Excise, Gst Bhawan, No.1,
Foulkes Compound, Anaimedu,
Salem, Tamil Nadu 636 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned show cause notice bearing Reference No.11/2024-GST (JC) dated 25.07.2024 and quash the same.



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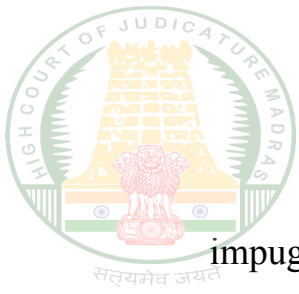
For Petitioner : Mr. Raghavan Ramabadran
For Respondents : Mr. B.Ramana Kumar,
Senior Panel Counsel

ORDER

This Writ Petition is filed challenging the show cause notice dated 25.07.2024 along with summary notice in Form GST DRC-01, dated 05.08.2024 under section 74 of the CGST Act. The impugned show cause notice demands differential amounts stated in the tabular column therein stating that the petitioner was engaged in misclassification of two-wheeler seats under Customs Tariff Heading (CTH) 9401 instead of CTH 8714 and the same resulted in alleged short payment of GST @ 18% instead of GST @ 28% for the period between July 2017 and October 2023.

2.The learned counsel for the petitioner submitted that the show cause notice was issued by the respondent for its assessment years starting from 15.11.2017 to 31.10.2023. He further submitted that in the present case, the dispute is pertaining to classification of two wheeler seats manufactured by the petitioner under CTH 9401 and not under CTH 8714. In the

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impugned order, it was alleged that by classifying its two wheeler seats under Customs Tariff Heading -CTH 9401, instead of CTH 8714, the petitioner committed short payment of GST @ 18% instead of GST @ 28% from July 2017 to October 2023, thereby shortfall amount was demanded for the period between 2017 and 2023.

3. It is submitted by the petitioner that on account of nuanced interpretation of entries of the Customs Tariff Act, a confusion prevailed in the industry concerning correct classification and rate to be adopted for supply of two wheeler seats and in view of the confusion that prevailed as to whether the two wheeler seats are to be classified under CTH 9401 or CTH 8714, the petitioner deposited differential GST amount @ 10% under protest for the disputed period from 15.11.2017 to 31.10.2023 which amounts to Rs.1,24,74,14,950/- and the said payment was made by the petitioner 'under protest' under the bonafide understating that the two wheeler seats would appropriately be fall under under CTH 9401 and not CTH 8714. Pursuant to which, a commercial decision was taken by the department by classifying the subject goods under CTH 8714 under protest,

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for which , 28% GST has to be deposited. Under the stated circumstances, the present show cause notice was issued towards payment of tax liability.

Already the petitioner has paid 10% of GST amount to the tune of Rs.124 crores.

4. It is his further submission that since the show cause notice was issued demanding tax in respect of six assessment years, the petitioner is not able to avail opportunity of AMNESTY scheme which is scheduled to be come into force from 1st November 2024 and in the event of respondent issuing separate show cause notices for each and every assessment year, the petitioner can very well avail AMNESTY scheme enabling it to get waiver of interest as well as penalty on its tax liability. Therefore , on this ground the impugned show cause notice is liable to be set aside.

5. Further, he would contend that in the matter of *Titan Company Ltd., Vs the Joint Commissioner of GST & Central Excise, Salem (2024-VIL-19-MAD)* this Court sets aside the bunching of show cause notices issued for separate years. Following the same, he requested this court to set

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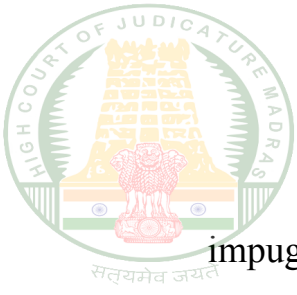
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aside the show cause notices issued for six assessment years and prays for a direction to issue separate show cause notices for each and every assessment years separately, in which case, he would fairly submit that he will not claim refund of Rs.1,24,74,14,950/- already deposited by him. He further submitted even he will not raise any issue of limitation and would opt for availing the AMNESTY scheme and will solve the issue.

6. Learned Senior Panel Counsel appearing for the respondent submitted that the submissions of the learned counsel for the petitioner may be recorded and appropriate orders may be passed.

7. Considered the submissions made by the leaned counsel for the petitioner as well as the learned Senior Panel Counsel appearing for the respondent.

8. In this writ petition, admittedly, the petitioner challenges the impugned show cause notice issued under section 74 of the CGST Act invoking the extended period of limitation. According to the petitioner, there is no willful misstatement made by the petitioner and hence the



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impugned show cause notice is without jurisdiction. Two wheeler seats manufactured by the petitioner are appropriately classifiable under CTH 9401 and not under CTH 8714.

9. This Court records the submission of the petitioner to the extent as follows that 'the deposit amount made by the petitioner as tax liability to the extent of Rs.1,24,74,14,950/- shall not be claimed to be refunded. Further in the event, if the respondent is issuing separate show cause notices for six assessment years, the petitioner will not raise the issue of limitation.' However, the petitioner's intention is that only in the event of separate show cause notices being issued, the petitioner will pay the tax liability and avail the AMNESTY scheme, which is proposed to be launched by the respondent from November 2024 and would get the benefit of waiver of interest as well as penalty.

10. While recording the submission of the learned counsel for the petitioner, as requested by the learned counsel for the petitioner that as per the decision of this Court cited supra, this Court sets aside the bunching of

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show cause notices issued for separate years, in the present case, the show cause notices may be split up regarding assessment years and separate notices may be issued for each and every assessment years separately in order to avail AMNESTY Scheme, which is proposed to be launched during November 2024.

11. For the foregoing discussions, the impugned show cause notice is set aside and the following order is passed.

(1) The respondent is directed to issue separate show cause notices regarding six assessment years within a period of two weeks from the date of receipt of copy of this order, in which case, the petitioner shall not raise issue of limitation.

(2) The amount of Rs.1,24,74,14,950/- crores already deposited by the petitioner, the petitioner shall not claim any refund of the said amount deposited with the respondent.

(3) With the above direction, this writ petition is



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disposed of. No costs. Consequently, the connected
miscellaneous petitions are closed.

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12. Post the matter for compliance on 16.10.2024.

23.09.2024

msr

Index: Yes/No

Internet: Yes/No

Note: Issue copy on 25.09.2024

To

The Joint Commissioner of GST and
Central Excise, Gst Bhawan, No.1,
Foulkes Compound, Anaimedu,
Salem, Tamil Nadu 636 001.

KRISHNAN RAMASAMY, J.

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