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W.P.No.4478 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.4478 of 2024
and W.M.P.Nos.4830 & 4832 of 2024

M/s.Golden Mandir Retail Private Limited,
Represented by its Managing Director
15, 17 & 19 Bazaar Street,
Salem - 636 001.

... Petitioner

-vs-

The Assistant Commissioner (ST) (FAC),
Salem Bazaar Circle,
Salem.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings Ref.No. 33AAFCG1079B1Z3/2017-18, quash the order dated 29.12.2023 passed therein in so far as it relates to Discrepancy No.1, 10 & 11.



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For Petitioner : Mr.R.L.Ramani
for Mr.B.Raveendran

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An assessment order dated 29.12.2023 is assailed as regards the findings relating to Discrepancy Nos.1, 2, 10 and 11. The petitioner states that it carries on business in textiles and also as an authorized dealer of Hyundai Motor Vehicles. Pursuant to an audit, show cause notice dated 25.09.2023 was issued to the petitioner. The petitioner replied thereto on 25.09.2023. The impugned order dated 29.12.2023 came to be issued thereafter.

2. Learned senior counsel for the petitioner submits that the writ petition was filed to assail the impugned order only in respect of Discrepancy Nos.1, 2, 10 and 11. With reference to Discrepancy No.1,



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which relates to non GST supply, learned senior counsel pointed out that the petitioner had received trade discounts from two suppliers based on performance and that such discounts fall within the scope of non GST supplies. In spite of recognizing that the only error committed by the petitioner was with regard to the column of the return under which reporting was done, it is stated that tax, interest and penalty was imposed. As regards Discrepancy No.2, which relates to alleged mismatch between the GSTR-3B and GSTR-1 returns, learned senior counsel pointed out that the assessing officer accepted that there was no discrepancy between the returns with regard to CGST and SGST. However, he points out that a finding was recorded with regard to alleged short payment of tax under IGST although such issue was not raised in the show cause notice.

3. With regard to Discrepancy No.10, which relates to indirect income, he pointed out that the petitioner had submitted copies of both the service tax returns and GSTR-3B returns to substantiate the



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assertion that these amounts were duly disclosed. With reference to the findings, he submits that the assessing officer recorded that no documents were submitted. As regards Discrepancy No.11, which relates to rent for commercial purposes, he submits that the taxpayer had pointed out that tax liability with regard to rent paid to unregistered persons was discharged under the RCM method, whereas as regards rent paid to registered persons, it was pointed out that the liability is imposed on the provider of services.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He points out that the petitioner should have availed of the statutory remedy in respect of the aspects pointed out by learned senior counsel. He further submits that the tax liability was confirmed in respect of these four discrepancies because the petitioner failed to place relevant documents on record.



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WEB COPY 5. As regards Discrepancy No.2 relating to alleged mismatch between GSTR-3B and GSTR-1 returns, it is evident that the assessing officer accepted the explanation of the petitioner that there was no mismatch. The finding recorded thereafter that there was short payment of tax under IGST cannot be countenanced on account of the fact that this issue was not raised in the show cause notice pursuant to which the assessment order was issued. As regards this head of liability, it becomes necessary for the assessing officer to issue a fresh show cause notice.

6. Turning to Discrepancy No.1, the petitioner submitted an explanation that trade discount / incentive was received from two suppliers on the basis of performance and that such discount / incentive was in the form of financial credit notes. The assessing officer recorded that relevant documentary evidence such as invoices, ledger copy, agreement and debit notes were not produced.



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It is further recorded therein that the taxpayer had wrongly reported the claim under exempted category instead of non GST supplies. Tax liability with interest thereon and penalty should not have been imposed in these circumstances and, if necessary, the petitioner should have been called upon to produce additional documents to establish that it is a non GST supply.

7. As regards Discrepancy No.10, which relates to indirect income, it is evident from the reference to the reply in the impugned order that the petitioner had enclosed copies of the service tax return and GSTR-3B returns to substantiate the assertion that the entire indirect income was disclosed. In the face of these documents, the finding that no documentary evidence was submitted is untenable. The last relevant discrepancy relates to payment of rent for commercial purpose. The impugned order records the reply of the taxpayer that tax liability on rental payment to unregistered persons was duly discharged. In light of this submission, the assessing officer



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should have called for relevant documents before concluding that the petitioner had not discharged tax liability in such regard.

8. For reasons set out above, the impugned assessment order calls for interference insofar as it relates to Discrepancy Nos.1, 2, 10 and 11. To that extent, the impugned order is quashed and the matter is remanded for re-consideration. As regards Discrepancy No.2, it is open to the assessing officer to issue a fresh show cause notice and thereafter proceed in accordance with law. As regards Discrepancy Nos.1, 10 and 11, the petitioner is permitted to submit any additional documents within a maximum period of *two weeks* from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a maximum period of *two months* thereafter.



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23.02.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

The Assistant Commissioner (ST) (FAC),
Salem Bazaar Circle,
Salem.



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SENTHILKUMAR RAMAMOORTHY,J

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