



W.P.(MD)No.17626 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17626 of 2024
and
W.M.P.(MD)Nos.15134 & 15136 of 2024

Tvl.Senthil Hardwares,
Represented by its Proprietor Ganesan Neelakandan.

... Petitioner

Vs.

The State Tax Officer,
Pattukottai – I Assessment Circle,
Pattukottai,
Thanjavur.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in GSTIN: 33AKBPN2569C1ZH/2018-19 on 27.04.2024 and the summary order in GST DRC 07 in Ref.No.ZD3304242210433 dated 27.04.2024 and quash the same as illegal and arbitrary.

For petitioner : Mr.A.Chandra Sekaran

For respondent : Mr.R.Suresh Kumar
Additional Government Pleader



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ORDER

This Writ Petition is disposed of at the time of admission after hearing the learned counsel for the petitioner and learned Additional Government Pleader for the respondent and after dispensing with the counter filed by the respondent.

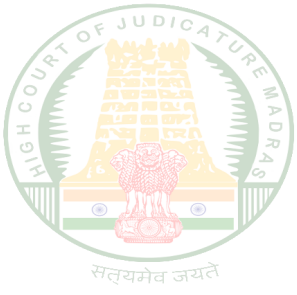
2. The petitioner is before this Court against the impugned order dated 27.04.2024 passed by the respondent for the assessment year 2018-19 bearing reference in 33AKBPN2569C1ZH.

3. By the impugned order, the respondent has confirmed the following amounts as tax due from the petitioner together with the interest and penalty:

Quantification:

Category of Tax	Tax	Interest due 20.4.2019 to 27.04.2024	Penalty	Total
CGST	281644.00	254652	281644.00	817940
SGST	281644.00	254652	281644.00	817940
CGST		94 (late return file interest)		94
SGST		94 (late return file interest)		94
Total	563288.00	509492	563288.00	1636068

4. The specific case of the petitioner is that the petitioner was issued with a



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notice in DRC 01 in GST portal on 19.04.2022, followed by remainder for personal hearing dated 13.02.2024 and that the personal hearing was held on 27.04.2024.

5. It is the case of the petitioner that on the said date, the petitioner filed a detailed reply, which has also been accepted by the respondent. However, in the impugned order, the respondent has demanded the aforesaid amount.

6. It is submitted that the aforesaid amount was not a part of the notice that was issued to the petitioner in GSTR 01 dated 19.04.2022, which was replied by the petitioner on 27.04.2024.

7. The learned Additional Government Pleader for the respondent, on the other hand, would submit that the petitioner has not produced the requisite documents to substantiate that the petitioner had validly availed the Input Tax Credit and therefore, the impugned order has been confirmed the demand as detailed above.



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8. Having considered the submissions made by the learned counsel for the petitioner and learned Additional Government Pleader for the respondent, the Court is of the view that the impugned order suffers from the gross violation of the principles of natural justice as the petitioner was not put to notice on defect No.1. Therefore, the reasoning, which produced in conclusion of the impugned order, is also unsustainable, as reads under:

DEFECT NO:1

The dealer reply carefully examined .previous year unclaimed ITC (SGST 14,297.01+ CGST 14,297.01) was verified with GSTR 3B and auto populated GSTR 2A in GST model 2 login) only for eligible the dealer taken in 2018-19

The taxpayer reply was verified with GSTR 3B and auto populated GSTR 2A in GST model 2 login.

PARTICULARS	CGST ITC	SGST ITC
ITC as per GSTR3B	15,27,922.00	15,27,922.00
ITC as per GSTR2A	12,31,980.52	12,31,980.52
ITC MISMATCH(GSTR3B-2A)	2,95,941.48	2,95,941.48
Previous year 2017-18 unclaimed ITC as per 2A	14,297.01	14,297.01
EXCESS ITC CLAIMED	281644.00 / /	281644.00 / /



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In a nutshell, Circular 183/15/2022 dated 27.12.2022 stipulates the following conditions to claim ITC in GSTR 3B though not reflected/auto populated in their GSTR 2A:

1. Original purchase invoices
2. Proof of payment made to your supplier.
3. Proof of receipt of goods.
4. Certification from your supplier to ensure the supply/certification from CA of supplier, if the ITC Claimed value is more than Rs.5 lakhs.
5. Payment of such supply is remitted to the government exchequer by your supplier by way of GSTR 3B return.

The taxpayer was not in possession of all the above mentioned conditions and failed to comply with the provisions laid for eligibility of ITC in the sections 16(2), 16(4) 17(5) Rule 36(4) and Circular as well. Hence, in the absence of complete material records and the failure on the part of taxpayer to establish the proof of claim, the excess claimed Input Tax Credit than available in GSTR 2A is subjected to reversal as quantified below:

Quantification:

Category of Tax	Tax	Interest due 20.4.2019 to 27.04.2024	Penalty	Total
CGST	281644.00	254652	281644.00	817940
SGST	281644.00	254652	281644.00	817940
CGST		94 (late return file interest)		94
SGST		94 (late return file interest)		94
Total	563288.00	509492	563288.00	1636068

Therefore, the Assessing authority hereby confirmed the aforesaid proposals and ordered the above under section 74 of TN GST Act 2017.

9. In view of the above, the Court is left with no other option, but to quash the impugned order and to remit the case back to the respondent to pass a fresh order on merits.

10. The impugned order, which stands quashed, shall be treated as



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corrigendum to the notice in DRC 01 dated 19.04.2022. The respondent is also directed to issue fresh additional addendum to the above as a show cause notice within a period of 45 days from today. The petitioner shall, thereafter, file a reply to the same within a period of 30 days. The respondent shall thereafter pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of two months. Needless to state, the petitioner shall be heard before passing the order.

This Writ Petition is allowed, with above directions. No costs.
Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

30.07.2024

To
The State Tax Officer,
Pattukottai – I Assessment Circle,
Pattukottai,
Thanjavur.



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C.SARAVANAN, J.

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