IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 12.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

**W.P.No.11131 of 2023 and**
**W.M.P.No.10988 of 2023**

M/s.Rajakumar Traders,
Represented by its Proprietrix,
Smt.R.Samundeeswari,
No.2B, 8th Cross Street,
SMV Puram West, Villianur,
Pondicherry – 605 110. ... Petitioner

Vs.

Additional Commissioner,
GST & Central Excise,
1, Goubert Avenue (Beach Road),
Puducherry – 605 001. ... Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for record relating to the impugned order in Original No.07/2022(GST) (ADC) dated 29.11.2022 passed by the Respondent and quash the same and consequently pass directions to the Respondent to permit the petitioner to conduct an examination in chief with the representative of M/s.Lakshmi Agencies.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.T.Ramesh Kutty

**ORDER**

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to quash the impugned order in Original No.07/2022(GST) (ADC) dated 29.11.2022 passed by the Respondent and consequently pass directions to the Respondent to permit the petitioner to conduct an examination in chief with the representative of M/s.Lakshmi Agencies.

2. It is the case of the petitioner that the petitioner is a proprietorship concern of M/s.Rajkumar Traders is engaged in the supply of tobacco products, Biscuits and various other provisional items. Based on the data analysis in the GST portal, the assessing officer noticed a considerable difference between GSTR 2A and GSTR 3B i.e., the taxable turnover declared is less than the value of the goods procured. Hence, inspection was carried out in the petitioner's premises on 06.02.2020. On being asked to explain the difference between GSTR 2A and GSTR 3B,

the proprietrix deposed that they did not purchase the quantity of cigars with CESS paid to the tune of Rs.4.38 Crores. Hence, the show cause notice dated 30.06.2022 has been issued demanding the differential tax based on the difference between GSTR 2A and GSTR 3B. The petitioner has filed a reply to the said show cause notice stating that no statement has been recorded from M/s.Lakshmi Agencies from whom the petitioner has purchased the products. Without considering the said reply filed and also without giving an opportunity of examination in chief, the Lakshmi Agencies / the respondent has passed an order in original confirming the proposal in the show cause notice. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submits that the petitioner seeks an opportunity to conduct an examination in chief against the authorized person of M/s.Lakshmi Agencies to ascertain the facts as to how they have uploaded the invoices in the name of the petitioner. However, rejecting the said request, the impugned order in original has been passed which is in violation of principles of natural justice. Further, the statement of the father of the petitioner that he was not aware of the

excess of invoices appearing in GSTR 2A has not been taken into account while passing the order in original. Since he has carried out the day to day activities of the company, the statements recorded from whom should be taken as part of the record. Further there is no corroborative evidence to prove the alleged purchases as per GSTR 2A. Hence, raising demand under Section 74 of the Goods and Service Tax Act, 2017 is unwarranted.

4. Per contra learned counsel for the respondent submits that the petitioner has failed to maintain specified records and suppressed the same in respect of supplies made to unregistered persons. Since the persons had under reported the sales turnover in the monthly returns by not availing the full CESS credit available in their GSTR 2A, which resulted in investigation being taken up. Further GSTR 1 is filled by the supplier namely M/s.Lakshmi Agencies which will get reflected in GSTR 2A of the petitioner. Hence, the petitioner is well aware of the details uploaded in the portal. Hence, there is no merit in the contention that M/s.Lakshmi Agencies has misused the name of the petitioner and uploaded the invoices.

5. Heard learned counsel appearing on either side and perused the materials placed on record.

6. Admittedly the petitioner is a proprietorship concerned which was inspected by the respondent officials on the ground that the petitioner has under reported the sales turn over. Admittedly there is a difference between GSTR 2A and 3B. GSTR 1 is filled by the supplier and GSTR 2A is auto populated. Hence, the details are made available for any recipient of Goods and Services for the purpose of verification and their purchase details and the quantum of input tax credit (in short 'ITC') that may be claimed by the recipient. With regard to the contention of the petitioner that there is no corroborative evidence, it is seen that the statement of sales effected by M/s.Lakshmi Agencies to the petitioner and the payments received from them against such sales is corroborated by the GSTR 2A details and *vice versa*. Hence the contention of the petitioner is unsustainable.

7. That apart the statement recorded from the father of the proprietrix and the authorized representative of the tax-payer reveals that

they were not in a position to explain the difference between GSTR 2A and 3B and also he admits the statement of sale signed by both the suppliers i.e., M/s.Lakshmi Agencies and himself.

8. In the present case, the allegations that has not been leveled on any assumption or surmises but based on documentary evidence in the form GSTR 2A which is a system generated document and GSTR 3A is statutory which is return filed by the petitioner. Since the petitioner is not in possession of the invoices as on the due date for filing of return, they are not entitled to claim any ITC.

9. When the law requires the registered person to maintain true and and correct account of (i) inward and outward accounts of Goods or both; (ii)stock of goods;(iii) output tax payable and paid, non-compliance of the same would amount to suppression. Hence, this Court does not find any reason to intervene in this matter.

10. With the reasons aforesaid, this writ petition is dismissed. No

costs. Consequently, connected miscellaneous petition is closed.

**12.04.2023**
**1/2**

Index : Yes / No
Speaking order / Non speaking order
Neutral Citation Case : Yes / No
*(rap)*

To

Additional Commissioner,
GST & Central Excise,
1, Goubert Avenue (Beach Road),
Puducherry – 605 001.

**M.DHANDAPANI, J.**

*(rap)*

**W.P.No.11131 of 2023**

**12.04.2023**
**½**

**W.M.P.No.10987 of 2023**

**<u>in</u>**
**<u>W.P.No.11131 of 2023</u>**

**<u>M.DHANDAPANI., J.</u>**

Dispensed with for the present.

**12.04.2023**
**2/2**

*rap*