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W.P.No.17861 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 15.06.2023

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**THE HONOURABLE DR. JUSTICE ANITA SUMANTH**

**W.P.No.17861 of 2023**  
**and WMP Nos.16983 & 16984 of 2023**

M/s.Hatsun Agro Product Ltd.  
Represented by its Director  
D.Sathyanarayan  
No.14, Tamil Nadu Housing Board "A" Road,  
Sholinganallur, Chennai-600 119

... Petitioner

Vs

- 1.The Deputy Commissioner (ST) – II  
Office of the Joint Commissioner (ST)  
Large Taxpayers Unit,  
Chennai-600 035
- 2.The Deputy Commissioner (CT) – LTU  
Tamil Nadu State/UT – LTU DC2: LT-DC2:LTU Tamil Nadu,  
Chennai.
- 3.State Tax Officer,  
Large Taxpayers Unit,  
Chennai-600 035.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the First Respondent in Order dated 17.03.2023 in File GSTIN/33AAACH0945G1Z0/2021-2022, and quash the same as illegal, arbitrary, unconstitutional and violative of the principles of natural justice.



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For Petitioner : Mr.S.Muthu Venkatraman

For Respondents : Mr.V.Prashanth Kiran  
Government Advocate

### **ORDER**

Mr.V.Prashanth Kiran, learned Government Advocate accepts notice for the respondents and is armed with instructions to enable a final disposal of this matter, even at the stage of admission.

2. The impugned order is one of assessment dated 17.03.2023, passed under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act'). The issue relates to reversal of Input Tax Credit (ITC), which, in the opinion of the Assessing Officer is ineligible and ought not to have been claimed.

3. Prior to the impugned order, which is a culmination of proceedings for assessment under Section 73 of the Act, the Assessing Authority had issued notices in DRC-01A and ASMT -10 calling for identical particulars as were required for the presnt impugned proceedings as well.

4. While it is the petitioner's case that those particulars have been supplied, learned Government Advocate would submit that the particulars have to be supplied in a tabulation that was specifically put to the petitioner.



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5. To be noted, the manner in which the respondent has sought the information along with supporting particulars including invoices is clearly set out in communication dated 09.09.2022 as follows:

*Inward Supplies – (GSTR 2B Vs. GSTR -3B):*

| ITC AS PER GSTR-3B |              |              |        | ITC AS PER GSTR-2B |              |              |           | DIFFERENCE   |              |              |           |
|--------------------|--------------|--------------|--------|--------------------|--------------|--------------|-----------|--------------|--------------|--------------|-----------|
| IGST               | CGST         | SGST         | CESS   | IGST               | CGST         | SGST         | CESS      | IGST         | CGST         | SGST         | CESS      |
| 42,11,50,343       | 23,38,28,698 | 23,38,28,698 | 68,814 | 87,50,22,741       | 61,71,05,196 | 61,71,05,195 | 94,27,162 | 45,38,72,398 | 38,32,76,498 | 38,32,76,497 | 93,58,348 |

*Further, the tax payer is requested to furnish the details of Input Tax Credit availment for the year 2021-22 as detailed below:*

*a) Categorisation of ITC*

| Month | ITC AS PER GSTR 2B |      |      | Eligible ITC in GSRT-2B |      |      | Not eligible ITC |      |      |
|-------|--------------------|------|------|-------------------------|------|------|------------------|------|------|
|       | SGST               | CGST | IGST | SGST                    | CGST | IGST | SGST             | CGST | IGST |
|       |                    |      |      |                         |      |      |                  |      |      |

*b) Eligible ITC*

| HSN | Inward supply value |             |        | Taxes paid |      |      |
|-----|---------------------|-------------|--------|------------|------|------|
|     | Intra State         | Inter State | Import | SGST       | CGST | IGST |
|     |                     |             |        |            |      |      |

*c) In eligible ITC*

| GSTIN | Inward supply value | Tax paid |
|-------|---------------------|----------|
|       |                     |          |

6. It is unclear as to whether the particulars have been supplied in this specific manner and whether the entirety of the supporting documents have been produced before the Assessing Officer.



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7. However, a perusal of the impugned order makes it clear that it is only in paragraph 5 onwards that the Assessing Officer has embarked on the determination/crystallisation of the amount to be reversed on a comparison of the ITC claimed under GSTR 3B and GSTR 2B.

8. This determination, in the considered view of the Court, ought to have been put to the petitioner in the show cause notice itself prior to passing of the impugned order, such that the petitioner had been afforded sufficient opportunity to respond the same and, or provide details in support of the claim of ITC.

9. Prior to the impugned order of assessment, what was exchanged was only general notices calling for particulars to which the petitioner is seen to have responded, albeit, insufficiently.

10. Thus, and in the interests of substantial justice, impugned order of assessment dated 17.03.2023 is set aside and shall be treated as a show cause notice by the petitioner, who shall appear along with all details in support of the reversal under the impugned order on Thursday, the 13<sup>th</sup> July, 2023, at the specific request of the learned counsel for the petitioner, without expecting any further notice in this regard.

11. Though this Court is reluctant to fix such a long date of hearing, the request of learned counsel for the petitioner is acceded to, as the authorised



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representative is stated to be a super senior citizen, who is 84 years old and it is in consideration of the same that the matter is fixed on 13.07.2023. No adjournment shall be sought on that day and if the petitioner does not appear on that day along with the supporting materials, the benefit granted under this order shall stand withdrawn without further reference to the petitioner.

12. After hearing the petitioner and consideration of materials, if any supplied in support of the show cause notice, let an order be passed within a period of six (6) weeks from date of personal hearing, i.e., on or before 25.08.2023, in accordance with law.

13. This Writ Petition stands disposed as above. No costs. Connected Miscellaneous Petitions are closed.

15.06.2023

Index : Yes  
Speaking Order  
Neutral citation: Yes  
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To

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**Dr.ANITA SUMANTH,J.**

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