IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.24928 of 2023
and
W.M.P.Nos.24354 and 24355 of 2023

Tvl. Much More,
Represented by Proprietor
No.66, 1st Floor,
Perumal Mudali Street,
Chennai – 600 079. ... Petitioner

Vs

The Assistant Commissioner (ST) (FAC),
N.S.C.Bose Road Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent's order dated 02.08.2023 in GSTIN 33APNPJ3649E1ZW/2017 – 18 and quash the same.

For Petitioner : Mr.J.Adithya Reddy

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondent.

2.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

3.This writ petition is being disposed of at the time of admission as no useful purpose would be served in keeping the present writ petition pending before this Court.

4.The petitioner is aggrieved by the impugned order dated 02.08.2023 rejecting the application filed by the petitioner for rectifying the order dated 17.05.2023 passed by the respondent under Section 161 of the Tamil Nadu General Tax Act, 2017. Relevant portion of the impugned order reads as under:

> "Thus it is evident from the above provision of law that rectification petiton can be filed only where there occurred any error apparent on the face of record in such decision or order. Whereas perusal of the rectification petition filed by the tax payer and perusal of the impugned assessment proceedings, it is seen that there exists no apparent error for invoking the provisions of Section 161 for rectification. The taxpayer has not filed sufficient proof of evidence on any apparent error on the impugned orders. It is further noticed that the rectification petition attempts to contest the orders and decision of the proper officer which are detrimental to revenue which was taken after due consideration and perusal in the course of adjudication proceedings."

5.By the aforesaid order, the ITC claimed on IGST for a sum of Rs.42,74,406/- was denied to the petitioner together with interest at 18%. The petitioner was also imposed with the penalty of Rs.4,27,441/-. Thus in all, the petitioner has been asked to pay a sum of Rs.86,05,726/-.

6.Order dated 17.05.2023 in Form GST DRC-07 was passed by the respondents. Order dated 17.05.2023 in Form GST DRC-07 preceded a notice in Form GST DRC-01A dated 01.11.2022 and a notice in Form

GST DRC-01 dated 08.02.2023. The petitioner had not replied to either of the notices and therefore the respondent passed the said order dated 17.05.2023 in Form GST DRC-07 whereby the proposals in the above mentioned notices were confirmed.

7.After order dated 17.05.2023 in Form GST DRC-07 was passed by the respondent, the petitioner sent a representation to the respondent on 27.05.2023 to revise the order dated 17.05.2023. Since the said representation did not evoke any response from the respondent, the petitioner filed an application under Section 161 of the Act for rectification dated 17.05.2023 passed by the respondent in Form GST DRC—07.

8.A reading of the impugned order indicates that, the respondent has not considered the case of the petitioner on merits. The petitioner appears to have claimed input tax credit on IGST at the time of import of the goods by the petitioner.

9.This aspect ought to be considered by the respondent while disposing of the application filed for rectification of mistake under Section 161 of the GST Act, 2017. Therefore, the impugned order is liable to be interfered with by remitting the case back to the respondent to pass a speaking order a fresh on merits after hearing the petitioner.

10. Considering the above, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law and also considering the documents which the petitioner would furnish to substantiate the petitioner had indeed imported the goods and had paid IGST on which the petitioner was entitled to input tax credit. This exercise shall be carried out by the respondent within a period of two weeks from the date of receipt of a copy of this order. The petitioner may file additional submission, if any, within a period of two weeks from the date of receipt of a copy of this order together with supporting documents.

11. This writ petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

24.08.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To

The Assistant Commissioner (ST) (FAC),
N.S.C.Bose Road Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003.

C.SARAVANAN,J.

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