IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26022 of 2023
and
W.M.P.No.25446 of 2023

Rainbow Motors,
No.276-A, Raman Road,
AVK Nagar, Alagapuram,
Salem – 4,
Represented by its Partner. ... Petitioner

Vs

The Assistant Commissioner (ST),
Hasthampatty Circle,
Salem. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Respondent leading to passing of Impugned Order dated 20.06.2023 vide GSTIN:33AAJFR0481M1ZZ/2018-19 and quash the same and direct the Respondent to pass an Assessment Order after allowing the Input Tax Credit.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mr.T.N.C.Koushik
Additional Government Pleader

ORDER

Mr.T.N.C.Koushik, learned Additional Government Pleader takes notice on behalf of the respondent.

2. The petitioner is aggrieved by the impugned Assessment order dated 20.06.2023. Relevant portion of the impugned order reads as under:

Interest under Section 50(3) of Tamil Nadu Goods and Service Tax Act 2017 as below:

Interest @ 18% should be calculated and paid till the date if payment of tax. Interest details as follows:-

SI. No	Month	Due date of filing monthly returns	Ineligible ITC			No. of days (upto 19.06. 2023)	Interest u/s 50(3)			Total
			SGST	CGST	IGST		SGST	CGST	IGST	
1	Feb'19	20.03.2019	893779	893779	389982	1552	684072	684072	298480	1666624
2	Mar'19	20.04.2019	453915	453915	420293	1521	340474	340474	315254	996202
Total			**1347694**	**1347694**	**810275**		**1024546**	**1024546**	**613734**	**2662826**

Interest above has calculated from the actual due date to discharge the tax liability for the said tax period through filing GSTR-3B return to the date of issuing only only. But interest to be paid up to the date of payment made.

But the taxpayer been instructed to pay the interest up to the date of payment of tax confirmed in the order. This will also attract penalty u/s 73(9) of the TNGST Act/CGST Act 2017.

Penalty levied under section 73 (9) of Tamil Nadu Goods and Service Tax Act, 2017 as below:-

As per Section 73(9) of the TNGST Act, 2017 the Proper Officer is empowered to levy penalty at 10% of tax which was excess credit claim of ITC by the tax payer. Hence, Penalty @ 10% or Rs. 10,000/- whichever is higher of the Excess Credit claim ITC calculated as above is also levied. The details of total tax, Penalty and Interest levied are given as follows:

Tax due (Amount in Rs.)

Act	Tax	Interest	Penalty	Total
IGST	8,10,275.00	6,13,734.00	81028	**15,05,037.00**
CGST	13,47,694.00	10,24,546.00	1,34,769.00	**25,07,009.00**
SGST	13,47,694.00	10,24,546.00	1,34,769.00	**25,07,009.00**
Total	**35,05,663.00**	**26,62,826.00**	**3,50,566.00**	**65,19,055.00**

3. However, the respondent while passing the order elaborately reproduced. The reply of the petitioner from Internal Page No.2 of the impugned order upto the Internal Page No.9. However, there is no discussion. Clearly, the impugned order has been passed in an arbitrary manner without considering the reply of the petitioner.

4. 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, within a period of six weeks from the receipt of a copy of this order. Before passing such order, the respondent shall consider the petitioner's reply, the content of which has been extracted above.

5. Needless to state, before passing such order, the petitioner shall also be heard.

6. The Writ Petition stands disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

05.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
jas/mac

To

The Assistant Commissioner (ST),
Hasthampatty Circle,
Salem.

C.SARAVANAN, J.

jas/mac

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