



W.P.No.2448 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.2448 of 2024
and W.M.P.Nos.2672 & 2673 of 2024

M/s.A.D.Jeyaveerapandia Nadar & Bros.
(Nagapattinam),
Represented by its Authorised Signatory,
K.Jeyaprakash,
Door No.57, Shop No.3,
Kamarajar Maligai,
Hospital Road, Velipalayam,
Nagapattinam-611 001.

... Petitioner

-VS-

The State Tax Officer,
Nagapattinam Assessment Circle,
Nagapattinam.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 28.12.2023 issued in GSTIN:33AAAFJ3044K1ZN/2017-2018 passed by the respondent and quash the same.



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For Petitioner : Mr.Hari Radhakrishnan
For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader (T)

ORDER

The petitioner assails an assessment order dated 28.12.2023 largely on the ground that the said order is non speaking.

2. The petitioner states that it is engaged in the wholesale and retail trading of grocery and agricultural produce. By an audit notice dated 04.05.2023, about 13 defects in the petitioner's returns were pointed out. Based on the petitioner's reply, it is stated that proceedings in respect of 6 defects were dropped. The petitioner further states that a show cause notice dated 29.09.2023 was received by him in respect of assessment year 2017-2018. The said notice set out defects noticed by the audit team under '7' heads. The petitioner replied thereto on 09.10.2023. In spite of such reply, it is stated that the impugned order was issued confirming the entire proposal made in the show cause notice and also imposing penalty equivalent to 10% of the tax levied on the petitioner. The present writ petition was filed in the said facts and circumstances.



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3. Learned counsel for the petitioner invited my attention to the show cause notice, the reply dated 09.10.2023 and thereafter to the impugned order. He contended that the impugned order exhibits complete non application of mind and that said order is unreasoned. By way of illustration, learned counsel referred to the second head dealt with therein relating to 'turnover mismatch'. He submitted that the assessing officer referred to the petitioner's reply and thereafter merely recorded that the reply of the dealer is not acceptable. Likewise, in respect of the fifth head dealing with 'reversal of Input Tax Credit (ITC)', he submitted that the petitioner's reply is set out in the impugned order, wherein the petitioner stated that ITC was availed and used only for taxable and zero-rated supplies, whereas the assessing officer recorded that ITC is liable to be reversed because the petitioner had used it partly for exempt supplies. By also referring to the seventh head relating to 'sundry creditors', learned counsel pointed out that the assessing officer recorded that relevant documents like invoices, bank statements and ledger copies were not produced. By turning to the reply dated 09.10.2023, he pointed out that the bank statement was given as a soft copy, as is evident from the list of enclosures to the reply.



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4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondent. He refutes the contention that a personal hearing was not provided by pointing out that such personal hearing was provided to the petitioner on more than one occasion i.e. 09.10.2023 and 14.12.2023.

5. On examining the impugned order, it is evident that the tax liability of the petitioner under about '7' heads was determined therein. As regards turnover mismatch, the assessing officer set out the particulars provided by the petitioner, recorded that the petitioner had produced the balance sheet and profit and loss account for the year 2017-2018 and thereafter recorded the following conclusion: “The reply of the dealer is not acceptable”. Thus, the assessing officer has merely recorded a conclusion in the nature of *ipse dixit* without any reasoning to support such conclusion.

6. As regards reversal of ITC, the petitioner/assessee stated that it had availed ITC and used the same exclusively for taxable and zero-rated supplies. After noticing such submission, the assessing officer has recorded



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the conclusion that ITC was used partly for effecting taxable supplies and partly for effecting exempt supplies. The latter conclusion appears to be clearly contrary to the submissions made by the assessee. As regards tax liability under the head 'sundry creditors', the petitioner/assessee stated that the payments to creditors are below 180 days and Rule 37 was not contravened. It was further stated that no ITC was involved. The reply of the assessee dated 09.10.2023 clearly discloses that the sundry creditors' list, payment date, bank date and bank statement were enclosed. Without considering these documents, a finding that bank statement was not provided is recorded in the impugned order.

7. Therefore, it appears that the impugned order was issued without taking into account the relevant material placed on record by the assessee. Consequently, the said order calls for interference and is hereby quashed.

8. As a corollary, the matter is remanded for reconsideration by the assessing officer. After providing a reasonable opportunity, including a personal hearing, to the assessee, the assessing officer is directed to issue a



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fresh assessment order within a maximum period of two months from the date of receipt of a copy of this order.

9. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.02.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

The State Tax Officer,
Nagapattinam Assessment Circle,
Nagapattinam.



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SENTHILKUMAR RAMAMOORTHY,J

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