IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.5333 of 2024
and W.M.P.Nos.5864 & 5867 of 2024

Lalithaa Jewellery Mart Limited
123, North Usman Road,
T.Nagar, Chennai - 17. ... Petitioner

-vs-

Assistant Commissioner (ST),
Intelligence - I, Commercial
Tax Department, R.241, PAPJM Building,
Greams Road, Chenni - 06. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in the impugned order issued vide Reference No. Ref.No.ZD331223168655D dated 22.12.2023 and quash the same and consequentially direct the respondent to grant ITC on the above grounds.

For Petitioner : Ms.Anu Viswanath
for Mr.K.Senguttuvan

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

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ORDER

An assessment order dated 22.12.2023 is assailed on the ground that Input Tax Credit (ITC) was erroneously denied to the petitioner on account of non-application of mind. The petitioner states that an inspection was undertaken of its registered place of business and that an intimation in Form GST DRC-01A was issued to the petitioner communicating tax liability. The petitioner replied thereto on 29.09.2023. A show cause notice was issued thereafter on 30.09.2023 calling upon the petitioner to show cause with regard to wrong availment of ITC of Rs.1,46,11,784/-. The show cause notice was replied to on 30.10.2023. The impugned order was issued thereafter.

2. Learned counsel for the petitioner submits that the ITC claim of the petitioner arose out of purchases by the petitioner from a supplier based in West Bengal. By referring to the relevant invoices of the supplier, learned counsel submits that the supplier paid requisite tax on the supplies. However, she further submits that the supplier made a mistake by filing the return in Form GSTR-1 by specifying total integrated tax (IGST) as zero in the relevant column and, therefore, the total taxable value of Rs.271,073,067,905.74/- was apportioned therein between CGST and SGST. Learned counsel submits that this error was committed during the initial period of implementation of GST laws in August 2017. Upon realizing the error, the supplier rectified the same while filing the GSTR-3B return. By referring to the GSTR-3B return, learned counsel points out that the total taxable value of Rs.271,089,041,548/- was correctly apportioned by showing a sum of Rs.1,60,92,026/- towards IGST and

sums of Rs.3,27,38,110/- each towards CGST and SGST. Thus, learned counsel submits that the purchase was genuine and that the supplier also duly paid requisite IGST, CGST and SGST thereon. According to learned counsel, the assessing officer did not apply his mind to the transaction and thereby confirmed the reversal of ITC.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. At the outset, he submits that principles of natural justice were adhered to and that, if aggrieved, the petitioner should have filed a statutory appeal. He also points out that disputed questions of facts arise and that such questions cannot be conveniently addressed in proceedings under Article 226.

4. The petitioner has placed on record sample invoices pertaining to the purchases made from the supplier in West Bengal. The petitioner has also placed on record the Forms GSTR-1 and GSTR-3B of the supplier. These returns pertain to August 2017. On

comparing the two returns, it is evident that the contention of learned counsel for the petitioner that an error was committed while filing Form GSTR-1 appears to be *prima facie* correct. At the end of the day, if the supply received by a registered person is genuine and taxes were paid in respect thereof by such supplier, there is no reason to deny the benefit of ITC to the registered person in the next leg of the transaction.

5. On perusal of the impugned order, in the operative portion thereof, it is recorded as under:

> "*The taxable person in their reply had stated that it is the obligation of the supplier to pay tax under the correct head and claim a refund of the wrong payment and had cited section 77 of the CGST Act 2017 and section 19 of the IGST Act 2017 while these sections provide mechanisms for refund, they do not absolve the recipient of the responsibility to rectify erroneous claims. In this regard, it is imperative for the recipient to exercise due diligence in verifying the accuracy of ITC claims. While acknowledging the possibility of errors by suppliers, recepients are equally responsible for rectifying any incorrect claims to maintain the integrity of the*

GST system. The destination based nature of GST reinforces the importance of accurate reporting to ensure that the revenue reaches the appropriate state exchequer. In the present case the tax paid by the supplier under CGST, SGST has reached their respective states without reaching the TamilNadu state exchequer. Hence the claim of ITC which had not reached the Tamil Nadu State exchequer cannot be claimed by the taxable person. Hence the reply filed by the taxable person is not acceptable and hence the reversal of ITC is confirmed along with interest and penalty."

	CGST (Rs.)	***SGST (Rs.)***
ITC reversal Confirmed	*73,05,894*	*73,05,894*

6. The above extract indicates that the assessing officer was of the view that the tax paid by the supplier reached the respective states without reaching the Tamil Nadu State exchequer. The documents on record *prima facie* indicate that the SGST component reached the State of Tamil Nadu. Therefore, the impugned order cannot be sustained.

7. For reasons set out above, the impugned order is quashed

and the matter is remanded to the assessing officer for re-consideration. After providing a reasonable opportunity to the petitioner, including a personal hearing, the assessing officer is directed to issue a fresh assessment order after taking note of the observations set out above. This exercise shall be completed within a maximum period of ***two months*** from the date of receipt of a copy of this order.

8. W.P.No.5333 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.5864 and 5867 of 2024 are closed.

04.03.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

Assistant Commissioner (ST),
Intelligence - I, Commercial
Tax Department, R.241, PAPJM Building,
Greams Road, Chenni - 06.

SENTHILKUMAR RAMAMOORTHY,J

rna

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