IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 14.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.6841 of 2024 and
W.M.P.Nos.7631 & 7632 of 2024

M/s. Scarlett Designs and Jewellery,
Represented by its Partner L.Karthikeyan,
No.261, 2nd floor, VMK Seshammal Trust,
Saradha College Main Road,
Salem-636 006. ... Petitioner

-vs-

The Superintendent of GST & Central Excise,
Salem-II Range,
No.106, 3rd floor, Varalakshmi Orchid,
Ramakrishna Road,
Salem-636 007. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in impugned order in OIO Sl.No.25/2023-GST-SUPT in GSTIN: 33ADPFS9395E1ZG/2018-2019 dated 28.12.2023 and consequently summary of the order in Form GST DRC-07 dated 01.01.2024, quash the same as erroneous and illegal and being violative of principles of natural justice.

For Petitioner : Ms.C.Rekha Kumari

For Respondent : Mr.Rajnish Pathiyil, Senior Standing Counsel

ORDER

An assessment order dated 28.12.2023 is challenged primarily on the ground that the petitioner's reply to the show cause notice was not taken into consideration.

2. The petitioner is a registered person under applicable GST enactments and engaged in the business of manufacturing jewellery. According to the petitioner, for the assessment period 2018-2019, the petitioner originally claimed Input Tax Credit (ITC) of Rs.4,47,040/- in the GSTR 3B return. However, it is asserted by the petitioner that the ITC was not utilised since there was no output tax. The petitioner further asserts that such ITC was reversed in the GSTR 3B return

filed for June 2020. After issuing an intimation in August 2023 and a show cause notice in September 2023, the impugned assessment order was issued in December 2023.

3. Learned counsel for the petitioner invited my attention to the intimation dated 28.08.2023 and pointed out that the same was replied to on 05.09.2023. She further submitted that ITC was reversed and that the GSTR 3B return reflecting such reversal was enclosed with the reply. Learned counsel also referred to the reply dated 14.12.2023 to show cause notice dated 14.11.2023 and also pointed out that such reply was duly uploaded on the GST portal. With reference to the impugned assessment order, learned counsel contended that the reply of the petitioner was disregarded and that the erroneous finding that the petitioner did not submit a reply was recorded therein.

4. Mr.Rajnish Pathiyil, learned senior standing counsel, accepts

notice for the respondent. By referring to the impugned assessment order, learned counsel points out that a finding was recorded therein that the tax payer utilised the ITC for payment of tax in terms of Rule 86 of the CGST Rules, 2017.

5. The documents on record include the reply dated 05.09.2023 to the intimation in Form DRC-01A. Also included therein is the reply dated 14.12.2023 to the show cause notice. In the impugned order, the assessing officer has referred to the reply to the intimation, but has not examined the explanation of the petitioner or recorded any findings in relation thereto. As regards the reply dated 14.12.2023, in spite of such reply being uploaded on the GST portal, the reply was disregarded and an incorrect finding that the show cause notice was not replied to by the tax payer is recorded in the impugned order. In these circumstances, the impugned order is clearly unsustainable.

6. Hence, the impugned assessment order is quashed and the

matter is remanded for reconsideration by the assessing officer. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of two months from the date of receipt of a copy of this order.

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

14.03.2024

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

The Superintendent of GST & Central Excise,
Salem-II Range,
No.106, 3rd floor, Varalakshmi Orchid,
Ramakrishna Road,

Salem-636 007.

SENTHILKUMAR RAMAMOORTHY,J

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