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W.P.No.7638 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.03.2024**

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.7638 of 2024
and W.M.P.No.8553 of 2024

M/s.Eicher Motors Ltd.
(Unit:Royal Enfield)
Represented by its Head Finance,
Mr.Hari Prasad,
PO Box No.5284
Thiruvottiyur High Road,
Thiruvottiyur,
Chennai-600 019.

... Petitioner

-VS-

1. Additional Commissioner,
Office of the Principal Commissioner of GST and
Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road, Chennai-600 034.
2. Additional Commissioner, Audit-1 Commissionerate
Office of the Commissioner of GST and Central Excise,
Audit I Commissionerate,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension, Chennai-600 101.
3. Assistant Commissioner (Audit) Circle VII, Audit-I
Commissionerate
Office of the Commissioner of GST and Central Excise,



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Chennai Audit I Commissionerate
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension, Chennai-600 101.

4. Superintendent of GST, Circle V, Group III,
Audit-I Commissionerate
GST and Central Excise Audit I Commissionerate,
Chennai, No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension, Chennai-600 101.

5. Deputy Commissioner Circle VI, Audit-I
Office of the Commissioner of GST and Central Excise,
Chennai Audit I Commissionerate,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension, Chennai-600 101.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari to call for the records relating to Impugned Order in Original bearing reference No.219/2023 CH.N (ADC) (GST) (DIN:20231259TK000041944C) dated 21.12.2023 issued by the 1st Respondent and quash the same.

For Petitioner : Mr.Vijay Narayan, Senior Counsel
for Lakshmi Kumaran and Sridharan
Attorneys

For Respondents : Mr.Ramesh Kutty
Senior Standing Counsel



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ORDER

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An order in original dated 21.12.2023 in relation to assessment period 2017-18 is challenged by the petitioner. The petitioner received a show cause notice dated 25.09.2023. Such show cause notice was replied to on 19.10.2023. Eventually, the impugned order was issued on 21.12.2023.

2. Learned senior counsel for the petitioner invited my attention to the impugned order. After pointing out that such impugned order dealt with seven issues, learned senior counsel focussed attention on the objection relating to short payment of GST on unreconciled sales turnover. He pointed out that the matter pertains to the initial year of GST implementation. Therefore, the petitioner had inadvertently disclosed the same turnover thrice while reporting in the GSTR 3B return. This was rectified by filing the GSTR 9 annual return. In spite of pointing this out to the assessing officer, he submits that the assessing officer held against the petitioner solely on the ground that the petitioner was lethargic in maintaining its accounts.

3. The next issue dealt with by learned senior counsel relates to the



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non-reversal of Input Tax Credit (ITC) on account of rejection. On this issue, he pointed out that goods received by the petitioner were defective.

Therefore, said goods were returned to the supplier by raising invoices and remitting taxes thereon. Learned senior counsel contended that the petitioner had two options while faced with this situation. The first option was to request the supplier to issue a credit note and thereafter reverse the ITC. The second option was to return the goods under an invoice and pay taxes thereon. By relying on a circular issued on 26.10.2018 (Circular No.72/46/2018-GST), he submitted that the tax payer has the option of returning the goods by treating it as a fresh supply.

4. The third issue dealt with by the petitioner relates to the reversal of ITC by the petitioner to the extent of almost Rs.28 crore. On this issue, it is submitted that the assessing officer disregarded the fact that ITC was reversed by the petitioner as regards the disparity between the GSTR 3B and GSTR 2A returns. Thus, it was contended that out of the total tax demand of about Rs.117 crore, the demand in relation to about Rs.115 crore is completely unsustainable.



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5. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice on behalf of the respondents. At the outset, he submits that the impugned order was issued after considering the reply of the petitioner to the show cause notice and after providing a personal hearing. In these circumstances, he submits that no case is made out to interfere under Article 226 of the Constitution of India.

6. He next submitted that the petitioner failed to submit necessary documents to establish that the turnover reflected in the GSTR 3B return was not correct. He also submits that the petitioner should have taken steps to rectify the return and not waited until the GSTR 9 return was filed after the end of the relevant assessment period. With regard to the methodology followed by the petitioner while returning defective goods, he contended that the course of action prescribed by statute is for the supplier to issue credit notes and for the recipient of goods to reverse ITC to that extent. For all these reasons, he submits that the impugned order does not warrant interference.



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7. With regard to the fourth objection pertaining to short payment of GST on unreconciled sales turnover as declared in Form GSTR 3B, the assessing officer noticed that the petitioner had made inadvertent errors while filing the GSTR 3B returns and that such errors were rectified while filing the GSTR 9 annual return. Thereafter, the following findings were recorded in relation thereto:

“20.3 I find that, in the reply given by the tax payer, they themselves had admitted that there was difference between GSTR 1 and GSTR 3B as per the Notice to the extent of Rs.2,07,56,42,109/- for various reasons stated in the table shown above. In majority of the cases, they have reported that, the taxable value had been shown double time in their return and in some month the supply for export was not reported in proper tables in the return. They have reported that in the month of November 2017, Taxable value net advance missed to be considered in 3.1(a) GSTR-3. B Rs.26.79 Crs.



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[i.e. Rs.26,80,21,170/-) Similarly in the earlier periods also the differences in the turnover runs in crores. This evident explicit that, the taxpayer had lethargically maintained their accounts without some sort of seriousness.”

8. From the above findings, it follows that the adjudicating authority rejected the petitioner's explanation because the petitioner was lethargic in maintaining its accounts. Even proceeding on the basis that the petitioner was lax in reporting the mistake within a reasonable period, such laxity does not justify the imposition of liability of about Rs.64,34,49,053/- on the basis of a turnover reported wrongly. In this regard, learned counsel for the petitioner also submitted that the statute does not enable rectification until the annual return is filed.

9. As regards the seventh objection relating to non reversal of ITC on account of rejection of goods received as inputs, the position taken by the petitioner is that the transaction was revenue neutral and did not cause any revenue loss. The petitioner also relied on Circular No.72 to contend that it



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is permissible for the petitioner, at its option, to return goods by treating the same as a supply and paying taxes thereon. In the impugned order, the adjudicating authority rejected this contention by analysis of the meaning of the expression “exchange” in Section 7 of the Central Goods and Services Tax Act, 2017.

10. As regards the tax demand pertaining to the disparity between the GSTR 3B returns of the petitioner and the auto-populated GSTR 2A returns, in the petitioner's reply dated 19.10.2023, it is stated that ITC of Rs.27,48,55,236/- was reversed on 30.09.2018. This reversal was not taken into account in the impugned order on the ground that documentary evidence was unavailable.

11. In the above facts and circumstances, the impugned order warrants interference albeit by putting the petitioner on terms. By taking note of the heads of tax demand in the impugned order and the submissions made in respect thereof, I find that a liability of Rs.64,34,49,053/- was imposed merely on the finding that the petitioner was lethargic in rectifying



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the error committed while filing the GSTR 3B returns. If this amount is excluded and some allowance is made for the ITC reversal against the head relating to excess availment of ITC, the remittance of a sum of Rs.5 crore as a condition for remand would safeguard revenue interest pending adjudication of remanded proceedings since it would be equivalent to approximately 10% of the remaining disputed tax demand. On instructions, learned counsel submits that the petitioner agrees to remit this amount as a condition for remand.

12. For reasons set out above, the impugned order dated 21.12.2023 is quashed and the matter is remanded for reconsideration subject to the condition that the petitioner remits a sum of Rs.5 crore towards the disputed tax demand within a period of three weeks from the date of receipt of a copy of this order. Subject to being satisfied that the said sum of Rs.5 crore was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the above amount.

13. W.P.No.7638 of 2024 is disposed of on the above terms.



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Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

1. Additional Commissioner,
Office of the Principal Commissioner of GST and

10/12



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Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road, Chennai-600 034.

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SENTHILKUMAR RAMAMOORTHY J.

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