IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.7830 of 2024
and W.M.P.Nos.8779 & 8780 of 2024

Indofil Industries Limited
Represented by Authorised Signatory
Mr.Ravi Kumar Pathak
T.S.No.1052, New Door No.47, Ward No.7,
Dr.Balasundaram Road, Puliyakulam Village,
ATT Colony, Coimbatore 641 018
Having registered office at Indofil Industries Limited,
Kalpataru Square - 4th floor, Kondivita Road,
Off Andheri Kurla Road, Andheri (East),
Mumbai, Maharashtra 400 059. ... Petitioner

-vs-

Commercial Tax Officer (State Tax)
Trichy Road Circle, Coimbatore - I,
Tamil Nadu. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 31.12.2023 with the reference no. ZD331223294065L on the file of the respondent, quash the same.

For Petitioner	:	Mr.R.Parthasarathy for S.Thvija
For Respondent	:	Mrs.K.Vasanthamala, GA (T)

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ORDER

An order dated 31.12.2023 is challenged in this writ petition. The petitioner is a registered person under applicable GST enactments and operates on Pan-India basis. Pursuant to an audit and the issuance of an audit report dated 24.09.2023, a show cause notice was issued to the petitioner on 29.09.2023. The petitioner replied thereto on 27.10.2023. The order impugned herein was issued thereafter on 31.12.2023.

2. Learned counsel for the petitioner referred to the impugned order and, in particular, the discussion relating to defect no.1 pertaining to the mismatch between the Input Tax Credit (ITC) reported in GSTR 9 versus the GSTR 3B returns. By inviting my attention to the petitioner's reply dated 27.10.2023, learned counsel pointed out that the petitioner submitted that the disparity was on account of the transitional credit availed of and reflected in the GSTR 9 annual return. In fact, learned counsel pointed out that the petitioner had indicated that Rs.1,15,40,474/- was claimed as transitional ITC by filing the requisite Form GSTR TRAN'S. He also pointed out that this explanation was disregarded while issuing the impugned order.

3. He next dealt with defect no.5 pertaining to non payment of tax on Director's remuneration under reverse charge mechanism. As

regards this alleged defect, he pointed out that the petitioner had submitted the purchase register and also that the Directors of the Company are based at the head office in Mumbai and that, therefore, the remuneration would be liable to tax on RCM basis in the State of Maharashtra and not in Tamil Nadu. The third aspect dealt with by him was defect no.2 pertaining to blocked credit under Section 17(5) of applicable GST enactments. On this issue, by referring to the reply, he pointed out that the petitioner had not claimed ITC on the four items specified under defect no.2.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that the tax liability was confirmed under the impugned order because the petitioner failed to produce documents with regard to the taxable turnover with specific reference to its operation in Tamil Nadu.

5. On examining the petitioner's reply in respect of the alleged

mismatch between the GSTR 9 and GSTR 3B returns, I find that the petitioner clearly stated in reply dated 21.09.2023 that transitional ITC of Rs.1,15,40,474/- was claimed and that this is reflected in the GSTR 9 return but not in the GSTR 3B return. As regards the alleged defect pertaining to Director's remuneration, in the reply dated 27.10.2023, the petitioner stated that the Directors of the Company are based at the head office in Mumbai and that their remuneration would be taxable on RCM basis in the State of Maharashtra and not in Tamil Nadu. Similarly, as regards the blocked credit, it was expressly stated in the reply dated 27.10.2023 that no ITC was claimed in respect of the four items specified under defect no.2.

6. In the impugned order, the respondent has confirmed the tax demand without taking into consideration the above replies of the petitioner. This is also the case with regard to the other defects discussed in the impugned order. Hence, the impugned order is unsustainable.

7. Consequently, the impugned order dated 31.12.2023 is quashed and the matter is remanded for re-consideration by the respondent. The petitioner is permitted to submit additional documents, if any, within ***fifteen days*** from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue a fresh order within ***two months*** from the date of receipt of the petitioner's reply.

8. W.P.No.7830 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.8779 and 8780 of 2024 are closed.

25.03.2024

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

To

Commercial Tax Officer (State Tax)
Trichy Road Circle, Coimbatore - I,
Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J

rna

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