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W.P.No.8264 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.8264 of 2024

&

W.M.P.Nos.9217 & 9218 of 2024

M/s.A.Ansari Abu Agencies
Represented by its Proprietor
Mr.Abdul Jabbar Ansari,
No.20/1, Muthuvel Layout,
6th Street, KK Road,
Villupuram-605 602.

... Petitioner

-VS-

The Superintendent of GST and Central Excise
Villupuram Range, Villupuram Division,
Old Telephone Exchange Building,
BSNL Campus, Hospital Road,
Villupuram-605 602.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in Order in Original No.09/2023-GST (Supdt) dated 17.12.2023 and the summary of the order in Form GST DRC-07 dated 28.12.2023 issued in Reference No.D331223238291U both relating to the assessment year 2017-2018 and quash the impugned orders as passed contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017 and direct the respondent to pass a fresh



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order after considering the replies dated 23.12.2021, 25.07.2022, 05.12.2022 & 27.04.2023 filed along with the confirmation certificates issued by the petitioner's customers.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.K.Mohanamurali
Senior Standing Counsel

ORDER

An order dated 17.12.2023 pertaining to the mismatch between the petitioner's GSTR 1 and GSTR 3B returns is under challenge in this writ petition.

2. As a registered person under applicable GST enactments, the petitioner filed a return in GSTR 1 in relation to outward supplies in the assessment period 2017-18. While doing so, the petitioner asserts that an error was committed by providing details pertaining to the same invoice more than once. Upon receipt of an intimation regarding such discrepancies, the petitioner replied thereto by stating that it was an inadvertent error and that the correct details are contained in the petitioner's GSTR 3B return. A similar reply was also sent upon receipt of the show cause notice. In



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addition, the petitioner obtained certificates from each of the relevant purchasers of goods. In those certificates, the purchasers stated that they had availed of input tax credit (ITC) by excluding the duplicate invoices and that this is reflected in their GSTR 2A returns. The impugned order was issued in these facts and circumstances.

3. By referring to the certificates issued by the petitioner's purchasers, learned counsel contends that tax liability has been imposed on the petitioner for an inadvertent error although no revenue loss was suffered on such account.

4. Mr.Mohanamurali, learned senior standing counsel, accepts notice on behalf of the respondent. By referring to the impugned order, he submits that the petitioner failed to rectify the GSTR 1 statement within the prescribed time limit, including the extended time in such regard. Therefore, he contends that the impugned order contains no infirmity.

5. The documents on record include the replies of the petitioner to the intimation and show cause notice. In the reply to the show cause notice, the



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petitioner has asserted that an inadvertent error was committed while filing GSTR 1 return and enclosed confirmation letters from the purchasers concerned. Each purchaser has certified that such purchaser did not avail of ITC in respect of the duplicate invoices and that this is evidenced by the auto-populated GSTR 2A return.

6. In the impugned order, in relevant part, it was concluded as under:

“8.2 The tax payable reported in excess in GSTR-1 was the self-assessed liability arrived by reporting the invoice wise details in B2B Category apart from consolidated reporting of B2C Supplies. Further, the taxpayer has not amended the GSTR-1 reporting pertaining to the period Financial year 2017-18 for which the facility to amend the same was extended up-to the due date of GSTR-3B of March-19. Hence the contention of the taxpayer at this stage that the said supplies were wrongly reported in GSTR-1 is not acceptable and furnishing of certificates from the recipient to the effect that ITC involved in those supplies were not availed is an after-thought initiation of action by the department.



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The above extract discloses that the petitioner's explanation was disregarded as unacceptable and as an after-thought merely on the ground that the petitioner did not amend the GSTR 1 statement on or before March 2019. In the face of the documents submitted by the petitioner, the matter requires reconsideration so as to ascertain whether the purchasers indeed did not avail of excess input tax credit on the basis of the duplicate invoices. For such reason, the impugned order call for interference.

7. Accordingly, the impugned order dated 17.12.2022 is set aside and the matter is remanded for reconsideration. The respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of two months from the date of receipt of a copy of this order. W.P.No.8264 of 2024 is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

27.03.2024

Index : Yes/No
Internet : Yes/No



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Neutral Citation : Yes/No
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To

The Superintendent of GST and Central Excise
Villupuram Range, Villupuram Division,
Old Telephone Exchange Building,
BSNL Campus, Hospital Road,
Villupuram-605 602.



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SENTHILKUMAR RAMAMOORTHY J.

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