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W.P.No.8898 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8898 of 2024 and
W.M.P.Nos.9908 & 9909 of 2024

M/s.APL Apollo Tubes Limited (Unit II),
Represented by its Vice President (Legal & Taxation),
Shri. Rajeev Kothari,
No.332-338, Alur Village Road,
Hosur – 635 109.

...Petitioner

Vs.

1. State Tax Officer (Intelligence),
Inspection – Group II,
Commercial Tax Buildings,
Perandapalli,
Hosur-635 109.

2.State Tax Officer (Intelligence),
Inspection Cell-I,
Salem-636 007.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to passing of the impugned order bearing Ref. No.GST INS-01/184/2022-2023 dated 08.03.2024 passed by the 1st respondent and quash the same as the same being arbitrary, passed in violation of the principles of natural



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justice, biased and the 1st respondent lacks the jurisdiction to pass the impugned order.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.T.N.C.Kaushik,
Additional Government Pleader (T)

ORDER

An assessment order dated 08.03.2024 is challenged in this writ petition.

2. The petitioner is engaged in the business of manufacture and supply of tubes and pipes of iron and steel. In relation to this business, the petitioner procures materials from manufacturers. After issuing an intimation on 21.02.2023, a show cause notice was issued to the petitioner with regard to alleged wrongful availment of Input Tax Credit (ITC). Such show cause notice was replied to on 15.11.2023 by also enclosing several documents. The impugned order was issued thereafter on 08.03.2024.

3. Learned counsel for the petitioner submits that the petitioner received goods from its supplier and availed of ITC in relation thereto. Subsequently, the supplier concerned issued credit notes in respect of some of the goods either in relation to price discounts or price revisions.



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Upon issuance of credit notes, instead of reversing the ITC, he submits that the petitioner availed of lower ITC in the subsequent months. In effect, he submits that the petitioner did not avail of excess ITC and that the transaction was revenue neutral. By referring to the impugned order, learned counsel pointed out that the reply of the petitioner, including the certificate obtained from J.Mandal and Company, Chartered Accountants, was completely disregarded. Therefore, he submits that the unreasoned order calls for interference.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. He submits that the petitioner should have reversed ITC to the extent of issuance of credit notes. He also submits that such reversal should have been indicated in the annual return in GSTR 9 or in the GSTR 9C reconciliation statement. Since the prescribed procedure was not followed by the petitioner, he submits that the impugned order does not call for interference.

5. The reply of the petitioner is on record. The petitioner has annexed about eight documents with the reply. These documents include a reconciliation statement explaining the break up and a Chartered



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Accountant's certificate. The Chartered Accountant's certificate and, in particular, the annexure thereto indicates *prima facie* that the petitioner did not avail of more ITC than that available in the GSTR 2A.

6. In the operative portion of the impugned order, it is recorded as under:

“It is seen from the above tabular column, there is difference between net ITC (net ITC is arrived by subtracting ITC in GSTR 2A with tax elements of credit note received) and ITC availed/claimed in GSTR-3B.

The tax payer have not filed any proof for reversal of Input tax credit tax payer wise and invoice wise details from the auto populated ITC in GSTR 2A and GSTR 3B.

Though reversal of ITC for of Rs.9,85,75,040/- is done in the month of August, September and November 2022, it is not clear that the credit note reversal due for of Rs.25,04,74,660/- has been reversed. It may be due to other reasons demanding ITC reversal. Hence, it is concluded that they have not reversed the ITC for credit note received and reversal is done for various other reasons. The reply filed by the tax payer is not acceptable since the tax payer not filed



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*connected documents and ITC Reversal of
Rs.25,04,74,660/- is confirmed. ”*

Thus, the 1st respondent has failed to take into consideration documents enclosed by the petitioner with the reply and record reasons for rejecting contentions made on the basis of such documents. Consequently, the impugned order cannot be sustained and reconsideration is warranted.

7. For reasons set out above, the impugned order is set aside and the matter is remanded to the 1st respondent for reconsideration. The petitioner is permitted to place all relevant documents within a period of two weeks from the date of receipt of a copy of this order. After providing a reasonable opportunity to the petitioner, including a personal hearing, the 1st respondent is directed to take into account all materials placed on record, and thereafter issue a fresh speaking order within two months from the date of receipt of the additional documents filed by the petitioner.

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



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Neutral Citation : Yes / No

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