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W.P.No.10511 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10511 of 2024
and W.M.P.Nos.11519 & 11520 of 2024

Tvl. Kavinkumar Textiles,
No.133/7, Ganapathi Nagar,
Erode, Tamil Nadu-638 011,
Represented by its Proprietor
Murugesan Veerasamy

... Petitioner

-VS-

Deputy State Tax Officer-1,
O/o The Assistant Commissioner,
Thindal Assessment Circle,
Erode.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on



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the file of the respondent in its impugned proceedings made in
GSTIN: 33AFXPM7611R1ZJ/2018-2019 dated 29.09.2023 and quash
the same.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.V.Prashanth Kiran, GA (T)

ORDER

An order dated 29.09.2023 is challenged in this writ petition. Proceedings were initiated against the petitioner pursuant to an inspection. An intimation dated 14.02.2023 was issued and the petitioner replied thereto on 13.03.2023. This was followed by a show cause notice dated 17.03.2023. The petitioner replied thereto on 23.09.2023. The impugned order came to be issued thereafter on 29.09.2023.



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2. Learned counsel for the petitioner referred to the impugned order and pointed out that except for three issues, proceedings were dropped in relation to other issues. Out of three issues, learned counsel for the petitioner submits that the impugned order is being accepted with regard to discrepancy between GSTR 3B and GSTR 2A. The first issue she focused on was difference in turnover declared in GSTR 3B on comparison with the GSTR 1 statement. On this issue, she pointed out that the petitioner paid the tax dues by way of a debit from the electronic credit ledger of the petitioner on 09.01.2023. She pointed out that this was even prior to the issuance of the intimation dated 14.02.2023. In these circumstances, learned counsel submits that the imposition of 100% penalty warrants reconsideration. She also points out that the respondent recorded the finding that the petitioner had only replied with regard to the tax and not with regard to penalty. The second issue that learned counsel focused on was the reversal of the Input Tax Credit (ITC) claimed in



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respect of purchases from Sri Vela Hardware and Paints. Learned counsel pointed out that the petitioner had purchased GI pipes from the supplier and used the same for machinery repairs and maintenance purposes only. In spite of enclosing details of purchases made along with reply dated 23.09.2023, learned counsel submits that it was concluded in the impugned order that the petitioner had purchased paint for the building.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. By referring to the impugned order, he contends that the petitioner discharged liability to the extent of Rs.31,813/- each towards CGST and SGST with regard to the difference between GSTR 1 and GSTR 3B, but failed to discharge liability of Rs.40,998/- each towards CGST and SGST. He submits that penalty was imposed in the said facts and circumstances.

4. On examining the impugned order, it is noticeable that the



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respondent recognized the fact that the petitioner paid amounts due with regard to the difference between GSTR 1 and 3B on 09.01.2023.

In spite of noticing the same, the respondent recorded at page no.23 of the typed set that the taxable person did not pay the tax dues within 15 days of the receipt of the notice dated 17.03.2023. This conclusion is contrary to the documents on record. As regards the reversal of ITC in respect of purchases from Sri Vela Hardware and Paints, it is unclear as to the basis for concluding that the petitioner had purchased paint in view of the petitioner's reply dated 23.09.2023 and the documents annexed thereto. The undischarged liability of Rs.38,900/- each towards CGST and SGST, which learned Additional Government Pleader referred to, relates to this and not the first issue. Since the petitioner's reply and the documents annexed thereto were not taken into consideration, the impugned order is unsustainable as regards these issues.

5. For reasons set out above, the impugned order is set aside in



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so far as it pertains to the issues relating to difference between GSTR 1 and 3B and reversal of ITC with regard to purchases from Sri Vela Hardware and Paints. As a corollary, the matter is remanded for reconsideration only with regard to these two issues. After providing a reasonable opportunity to the petitioner, including a personal hearing, the respondent is directed to issue a fresh order with regard to these two issues within a period of three months from the date of receipt of a copy of this order.

6. W.P.No.10511 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.11519 and 11520 of 2024 are closed.

22.04.2024

rna

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

Deputy State Tax Officer-1,
O/o The Assistant Commissioner,

6/7



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Thindal Assessment Circle,
Erode.

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SENTHILKUMAR RAMAMOORTHY,J

rna

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