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W.P.No.13518 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.13518 of 2024
and W.M.P.No.14669 of 2024

Mr.Manohar, S.o.Varadappa Naicker,
Sri VMS Engineering, GSTIN: 33ALHPM3534D2ZG,
No.1/209, Kalaiamman Kovil Street,
Karapakkam, Chennai,
Tamil Nadu 600 097.

... Petitioner

-VS-

The Assistant Commissioner of GST & Central Excise,
Sholinganallur Division,
Chennai South Commissionerate,
MHU Complex, 692, Anna Salai, Nandanam,
Chennai, Tamil Nadu 600 035.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the impugned order Number: 30/2023 dated 28.12.2023 on the file of the respondent and quash the same.



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For Petitioner : Ms.G.Vardini Karthik
for Mr.B.Sakthivel

For Respondent : Mr.Rajendran Raghavan, Sr. SC

ORDER

An order dated 28.12.2023 rejecting the petitioner's request for refund is challenged in this writ petition. Pursuant to an audit, observations were communicated to the petitioner. One of the observations pertained to the petitioner having wrongly claimed Input Tax Credit (ITC) in respect of CGST and SGST instead of IGST. Upon being informed of the above, the petitioner paid sums of Rs.4,91,390/- and Rs.4,59,000/- in Form GST DRC 03 dated 13.06.2023. A claim for refund was made thereafter. As regards the month of July 2020, the petitioner asserts that a double payment was made with regard to the difference between the petitioner's GSTR 1 statement and the GSTR 3B return. Both these amounts were claimed by way of refund. Such claim was rejected by the order impugned herein.



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WEB COPY 2. Learned counsel for the petitioner referred to the impugned order and pointed out that such order records that the petitioner made payment under DRC 03 in respect of the availment of ITC under the CGST and SGST heads instead of IGST. In spite of noticing the same, learned counsel contends that no reasons were assigned for rejecting the refund claim. In particular, by referring to sub-section (1) of Section 77 read with clause (d) of sub-section (8) of Section 54 of applicable GST enactments, learned counsel contends that this case falls within the scope of sub-section (1) of Section 77. On the second issue, she points out that the petitioner had set out details of the double payment in the reply to the show cause notice, whereas no reasons were assigned for rejecting the refund claim.

3. Mr.Rajendran Raghavan, learned senior standing counsel, accepts notice for the respondent. By referring to the impugned order, he points out that the respondent concluded that the refund



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claims do not fall within the scope of sub-section (8) of Section 54.

He also points out that sub-section (8) of Section 54 was extracted in the order before recording such conclusion .

4. Sub-section (1) of Section 77 is as under:

“A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intre-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.”

5. Clause (d) of sub-section (8) of Section 54 expressly refers to refund of tax in pursuance of Section 77. In this statutory context, while considering the petitioner's claim, it was necessary for the respondent to respond to the submission and record reasons for



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concluding that the petitioner's claim does not fall within the scope of sub-section (1) of Section 77 read with clause (d) of sub-section (8) of Section 54. The operative portion of the impugned order is as under:

“6. I have gone through the submissions made by the taxpayer vide RFD 09 and letter dt.25.8.2023. It is seen that, the taxpayer himself wrongly availed the ITC under different head in CGST and SGST (CGST Rs.2,29,500/p and SGST Rs.2,29,500/-) instead of Rs.4,59,000/- of IGST therefore it is a wrong availment of ITC. On being pointed out by audit they paid the wrongly availed ITC and claiming refund hence this case does not fall within the ambit of Section 54(8) of CGST Act, 2017. An amount of Rs.319494/- (CGST Rs.159747/-, SGST Rs.159747/) is pertaining to differential tax liability and interest Rs.172842/- is an offshoot of delayed payment of tax liability. As such it is found that there is no excess payment and not eligible to claim refund amount of Rs.9,51,336/-.)

6. On examining the above extract, it appears that no reasons



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have been recorded for concluding that the claim does not fall within the ambit of sub-section (1) of Section 77.

7. Even as regards the second issue relating to excess payment, while a conclusion is drawn that there is no excess payment, the petitioner's reply in such regard, wherein specific details are set out, was not engaged with and proper reasons were not assigned for the conclusion that there is no excess payment. Consequently, the matter requires re-consideration.

8. For reasons set out above, impugned order dated 28.12.2023 is set aside and the matter is remanded for re-consideration. The respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within *two months* from the date of receipt of a copy of this order.

9. W.P.No.13518 of 2024 is disposed of on the above terms. No



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costs. Consequently, W.M.P.No.14669 of 2024 is closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

The Assistant Commissioner of GST & Central Excise,
Sholinganallur Division,
Chennai South Commissionerate,
MHU Complex, 692, Anna Salai, Nandanam,
Chennai, Tamil Nadu 600 035.

SENTHILKUMAR RAMAMOORTHY,J

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