IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17003 of 2024
and W.M.P.Nos.18737, 18739 & 18740 of 2024

M/s.Silk Junction
Represented by its Proprietrix
Mrs.V.Chitra
42/1, V.O.C.Street, Punjai Puliampatti
Erode – 638 459. ... Petitioner

-vs-

1.The Deputy State Tax Officer,
Sathyamangalam Assessment Circle,
Erode.

2.The State Tax Officer,
Sathyamangalam Assessment Circle,
Erode.

3.The Branch Manager,
Kotak Mahindra Bank Limited,
Skanda Square, 727 Avinashi Road,
Coimbatore – 641 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the impugned proceedings of the first respondent in GSTIN No. 33ADMPC3748C1ZX/2019-2020 dated 30.01.2024 and the connected order under Section 73 dated 30.01.2024 and the summary of the order in GST DRC – 07 dated 30.01.2024 passed in Reference No.: ZD330124148236Q and quash the impugned proceedings as passed contrary to the provisions of the CGST / TNGST Act, 2017, without granting personal hearing as contemplated under Section 75(4) of the CGST / TNGST Act, 2017 and so passed in violation of principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents 1, 2 : Mr.C.Harsha Raj, AGP (T)

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ORDER

An order in original dated 30.01.2024 is assailed on the ground that the petitioner's reply was not taken into consideration. Upon scrutiny of the petitioner's return, an ASMT 10 notice was issued on 15.03.2023. Since the petitioner did not reply thereto, show cause notice dated 14.12.2022 was issued. Such show cause notice *inter alia* dealt with the mismatch between the petitioner's GSTR 3B returns and the auto populated GSTR 2A as regards Input Tax Credit. It also dealt with the turnover mismatch between the petitioner's GSTR 1 and the e-way bill portal. By reply dated 06.06.2022, the petitioner stated that the Input Tax Credit available, as per GSTR 2A, if checked month wise, is greater than the Input Tax Credit (ITC) claimed in GSTR 3B. As regards turnover mismatch, it was stated that the petitioner had paid Rs.5,82,887/- and declared the same in the returns. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner referred to the above mentioned reply and thereafter to the impugned order. As regards the issue relating to ITC mismatch, he submits that contradictory findings were entered to the effect that the tax payer did not file objections and that the tax payer's reply was considered. He also points out that an issue relating to Section 16(4) was raised in the impugned order although not mentioned in the show cause notice. With regard to the e-way bill mismatch, he submits that it was erroneously recorded that the tax payer did not respond thereto, whereas the petitioner had stated that taxes due on account of such turnover mismatch were discharged and reflected in the returns. In conclusion, he points out that a sum of about Rs.3,11,280/- was recovered from the petitioner's bank account pursuant to the impugned order.

3. Mr.C.Harsha Raj, learned Additional Government Pleader,

accepts notice for the first and second respondents. After submitting that principles of natural justice were complied with, he submits that the matter may be remanded for re-consideration especially in view of the recovery of a sum of Rs.3,11,280/-.

4. On examining the impugned order in comparison to the petitioner's reply, it is noticeable that the petitioner's assertion that the ITC available in GSTR 2A exceeds that availed of in GSTR 3B was not considered. Similarly, with regard to the turnover mismatch between the petitioner's GSTR 1 return and the e-way bill portal, the petitioner's reply to the effect that the tax liability was discharged was not taken into consideration. Consequently, the matter requires re-consideration.

5. For reasons aforesaid, impugned order dated 30.01.2024 is set aside and the matter is remanded for re-consideration. After providing a reasonable opportunity to the petitioner, including a

personal hearing, the first respondent is directed to issue a fresh order within ***three months*** from the date of receipt of a copy of this order. In view of the assessment order being set aside, the bank attachment is raised.

6. W.P.No.17003 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18737, 18739 and 18740 of 2024 are closed.

16.07.2024

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

To

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