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W.P.No.18171 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18171 of 2024
and W.M.P.No.19957 of 2024

M/s.Clean Switch India Pvt. Ltd.,
Represented by its Director
Mrs.Srividya Kasturi,
Plot.102/36, 1st Floor, Defence officers colony,
Ekkattuthangal, Chennai 600 032.

... Petitioner

-VS-

The State Tax Officer,
Nandambakkam Assessment Circle,
No.307, 3rd floor,
Integrated Commercial Taxes Building,
Nandanam, Chennai-600 035.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus to call for the impugned
proceedings of the respondent in TIN: 33970907769/2016-2017 dated



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18-03-2024 and quash the same so far as the issue relating to the reversal of ITC and penalty levied under section 27(4) of TNVAT Act, 2006 are concerned, as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also against the principles of natural justice and further direct the respondent to consider the Section 84 application dated 6.2.2023 and the letter dated 29.2.2024 filed by the petitioner in obedience to the orders of this Honble Court in W.P.No.35621 of 2023 dated 21-12-2023 on its own merits and pass a speaking order in accordance with law by affording an opportunity of personal hearing.

For Petitioner : Mr.Rajkumar P.

For Respondent : Mr.C.Harsha Raj, AGP (T)

ORDER

An order dated 18.03.2024 is assailed in so far as it pertains to the tax and penalty imposed in respect of the belated filing of returns and the consequential reversal of Input Tax Credit (ITC). An assessment order for assessment year 2016-2017 was issued on 03.09.2019. The petitioner did



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not challenge such order either by way of a statutory appeal or by way of a writ petition. On 06.02.2023, the petitioner filed a rectification application.

Such rectification application was rejected by order dated 17.08.2023. W.P.No.35621 of 2023 was filed challenging such order. By accepting the contention that the order was non speaking, the matter was remanded for reconsideration. The order impugned herein was issued in these facts and circumstances on 18.03.2024.

2. Learned counsel for the petitioner submits that the respondent accepted the petitioner's request for rectification with regard to the issue relating to the wrong claim of ITC to the extent of Rs.40,15,403/-. As regards the belated filing of returns and the reversal of ITC on that account, learned counsel contends that the petitioner had requested for a copy of the returns, including by letter dated 08.08.2019. Without providing a copy of the petitioner's returns, he submits that the tax proposal was confirmed by refusing to rectify. He also submits that penalty was imposed at 300%. Learned counsel submits that penalty cannot be imposed by invoking sub-section (4) of Section 27 of the Tamil Nadu Value Added Tax Act, 2006



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(the TNVAT Act) in respect of belated filing of returns. He submits that the petitioner had placed on record a judgment of a Division Bench of this Court to that effect. He also submits that the failure to consider a binding judgment of the High Court or the Supreme Court constitutes a valid reason for rectification. For this proposition, he relied upon the judgment of the Division Bench of this Court in *Khivraj Motors Limited v. Assistant Commissioner (CT) and another, W.A.Nos.3201 to 3204 of 2004, judgment dated 04.02.2010*. He also relies upon judgments with regard to the scope of Section 84 of the TNVAT Act.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He points out that the earlier order dated 17.08.2023 was set aside by order dated 21.12.2023 in W.P.No.35621 of 2023 solely on the ground that such order was non speaking. He also points out that the order records that the petitioner had traced the old documents and that there was no direction in the said order to provide the returns to the petitioner. In these circumstances, he submits that no case is made out to interfere with the rectification order.



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4. On examining the impugned order, it is evident that the petitioner's contention was accepted with regard to the wrong claim of ITC after noticing that the dealer had rectified the error. As regards belated claim of ITC, it is recorded, in relevant part, as under:

“ The reply of the dealer is examined carefully. They have filed returns for the Month of March 2017 belatedly on 02.08.2017. Return copy available as per 'Dealer details' from the Web Portal [CF.Page 35].

Hence, the reply filed by the dealer is found not acceptable as they have not filed any proof of filing of return for the Month of March 2017 by availing of ITC amount of Rs.1,28,30,514.00 within the prescribed time limit as per the provisions of Section 19(11) of the TNVAT Act 2006.”

From the above extract, it follows that the respondent noticed that the returns for the month of March 2017 were filed belatedly on 02.08.2017. The order also records that the copy of the return was available on the web portal. The petitioner does not assert that the return was not filed on



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02.08.2017 and that it was filed earlier. The turnover and other particulars were taken from the petitioner's returns while recording conclusions on this issue. Since the conclusion was based on a reasonable appraisal of the material, no interference is warranted as regards the tax component.

5. As regards penalty, the petitioner relied on the judgment of the Division Bench of this Court in *M/s.Shree Laxmi Jewellery Limited v. The State of Tamil Nadu, Tax Case (Revision) No.1 of 2016, judgment dated 31.01.2019* for the proposition that sub-section (4) of Section 27 of the TNVAT Act should not be invoked merely on account of belated filing of return. In spite of placing this judgment before the respondent, there is no mention of such judgment or any consideration of such principle in the impugned order. To that extent, interference with the order is called for.

6. For reasons set out above, W.P.No.18171 of 2024 is disposed of without any order as to costs by partly setting aside order dated 18.03.2024 only in so far as the imposition of penalty is concerned and remanding that aspect for reconsideration. After providing a reasonable opportunity to the



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petitioner, including a personal hearing, the respondent is directed to issue a fresh order within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

29.07.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

The State Tax Officer,
Nandambakkam Assessment Circle,
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Nandanam, Chennai-600 035.



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