IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.08.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.18804 of 2024
and
W.M.P.No.20627 & 20632 of 2024

Mr.Robinson Jeypaul,
Proprietor,
Tvl. J.R.Home Needs,
No.60, T.H.Road, Thiruvottiyur,
Chennai – 600 019. ...Petitioner

Vs.

1. The Commercial Taxes Officer,
   Thiruvottiyur, Avadi, Tiruvallur.

2. The Assistant Commissioner (ST)
   Thiruvottiyur Assessment Circle Station,
   Door No.32, Room No.215, 2nd Floor,
   Thiruvallur Division, Integrated Commercial Taxes Building,
   Elephant Gate Bridge Road, Vepery,
   Chennai – 600 003. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to the impugned order bearing Reference ZD331223274085N dated 30/12/2023 passed by the First Respondent based on the proceedings bearing Reference GSTIN 33ANCPJ8946K2ZN/2017-18 dated 28/12/2023 of the Second Respondent and to quash the same.

For Petitioner : Mr.T.R.Ramesh
For Respondent : Mrs. K.Vasanthamala
Government Advocate (T)

Order

The challenge in this Writ Petition is to the order dated 30.12.2023 passed by the first respondent based on the proceedings issued by the second respondent dated 28.12.2023 and to quash the same.

2. The case of the petitioner, in short is as follows:-

i) The petitioner is an assessee on the files of the respondent; that for the AY 2017-18, the petitioner had paid the entire tax and also filed monthly returns and claimed ITC in GSTR-3B, however, the respondent-Department, upon scrutiny of the petitioner's returns, issued Form GST ASMT-10 for difference in GSTR-3B and GSTR-2A/GSTR-2B, and consequently, issued a show cause notice dated 23.09.2023 denying the Input Tax Credit (ITC) to the tune of Rs.98,807/- towards CGST and Rs.98,807/- towards SGST with interest and penalty; that the petitioner, on receipt of such show cause notice, filed their reply on 21.10.2023 despite the same, the first respondent, based on the proceedings passed by the second respondent dated 28.12.2023 , confirmed the proposals made in the show cause notice and passed an order dated 30.12.2023. Challenging the same, the present Writ Petition is filed.

3. Mr.T.R.Ramesh, learned counsel appearing for the petitioner would submit that as per the Circular No.183/15/2022 dated 27.12.2022, only when the difference on comparison of GSTR-3B and GSTR-2A exceeds more than Rs.5 lakhs, assessee has to get a certificate from Chartered Account of his supplier and accordingly, petitioner has produced such certificate obtained from the supplier end in their reply filed on 21.10.2023, however, the respondent-Department, without considering the same, proceeded to confirm the proposals made in the show cause notice and passed the impugned order, on a wrong premise that certificate has not been produced. Further, learned counsel submitted that the difference in ITC claim is owing to the mistake committed by the petitioner's suppliers, as they uploaded the invoice details in the portal under B2C Column, instead of B2B Column and to prove the same, the petitioner also filed a statement obtained from their suppliers to that effect but the same was not considered in the assessment order, whereas, the assessment order proceeds to state, as if, the petitioner has not produced the certificate along with required invoices. However, learned counsel for the petitioner fairly submits that if one more opportunity is granted to the petitioner for filing the invoices, the petitioner would file the invoices along with the required certificate and other documents, therefore, seeks appropriate orders for setting aside the impugned order. Further, it is submitted that the respondent has already initiated recovery proceedings against the petitioner and recovered entire disputed tax from the petitioner.

4. Mrs.K.Vasanthamala, the learned Government Advocate (T) also in fair enough submitted that since entire disputed tax amount has already been recovered from the petitioner and that the petitioner has also come forward to produce copy of the invoices along with the required Certificate and under the said circumstances, if this Court is satisfied with the submission of the petitioner, then, appropriate orders may be passed.

5. I have given due considerations to the submissions made on either side and perused the materials available on record

6. In the present case, since the petitioner has failed to produce the certificate along with required copy of invoices, the impugned order came to be passed against the petitioner. It is the contention of the petitioner that they have produced the certificate, however, not the particulars related to goods received, goods movement details such as lorry receipt, original invoice copies, RCM paid details and though the said fact was clearly stated by the petitioner, in their reply, respondent-Department, without considering the said aspect, passed the impugned order on a wrong presumption that the petitioner has failed to produce the certificate along with required documents.

6.1 Therefore, it is clear that owing to the failure on the part of the petitioner to produce required documents before the Adjudicating Authority concerned, has resulted in the impugned order. However, considering the fact that petitioner is in possession of required documents, particularly, the copy of invoices, and is ready to produce the same, if an opportunity is granted, this Court has to consider the request of the petitioner, since, only in the absence of documents, the Adjudicating Authority has passed the order dated 28.12.2023, based on which, the impugned order came to be passed against the petitioner, and in order to render justice, this Court is inclined to consider the request of the petitioner, since justice has to be meted out, and failure to do so, would amount to denial of justice.

6.2 Further, considering the fact that the respondent-Department has already recovered the disputed tax amount from the petitioner, and that if the petitioner succeeds, certainly, the amount recovered from the petitioner has to be refunded to the petitioner, either in the form of cash or be adjusted towards ITC, this Court is inclined to consider the request of the petitioner now made, since, failure on the part of the petitioner to produce the required documents before the Adjudicating Authority is not due to their fault, but, owing to the fault on the part of the supplier, as, they mistakenly uploaded the invoice details in the portal under B2C Column, instead of B2B Column, unfortunately, at that point of tiem, the petitioner were unable to produce such documents either before the Adjudicating Authority or at the time of filing reply. However, considering the fact that the petitioner is now in possession of supportive documents, and is ready to produce the same, if an opportunity is granted, this Court is of the view that the petitioner cannot be mulcted with any liability for the mistake committed at the supplier end.

7. Thus, in the light of the above discussion, this Court is inclined to pass the following orders:-

i) The impugned order dated 30.12.2023, which was passed by the first respondent based on the proceedings of the second respondent dated 28.12.2023 is set aside and the matter is remanded to the Authority concerned for fresh consideration, who shall, upon the petitioner filing their additional reply along with all supportive documents, as that are required by the Authority within a period of two weeks, shall issue a notice of personal hearing to the petitioner granting 14 days' time and after hearing the petitioner, in full, shall pass final orders in accordance with law.

8. In the result, the Writ Petition is allowed on the aforesaid terms.

No costs. Consequently, connected Miscellaneous Petitions are closed.

22.08.2024

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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