IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.24948 of 2024 &
W.M.P.Nos.27292 & 27294 of 2024

Maasha Garments,
Rep. by its Proprietor,
#12, Serankattu Thottam,
Near Valli Vidyalaya School,
Dharapuram Road,
TIrupur, Tamil Nadu - 641 608. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Bazaar Road Assessment Circle,
Tirupur, Tamil Nadu: 641 608.

2.Goods and Services Tax Network,
Rep. by its Nodal Officer,
4th Floor, East Wing, Asset 11,
Hospitality District, Aerocity,
New Delhi - 110 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned assessment order in Ref.No.ZD330224116667J, dated 20.02.2024 under Section 73 of the CGST/TNGST Act, 2017 for the financial year 2022-23 uploaded along with summary of order in DRC07 from the files of the first respondent herein and quash the same.

For Petitioner : M/s.Aparna Nandakumar

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Taxes) for R1

Mr.M.Santhanaraman
Senior Standing Counsel for R2

ORDER

This writ petition has been filed to quash the assessment order dated 20.02.2024, issued under Section 73 of the CGST/TNGST Act, 2017, for the financial year 2022-23, along with the summary of the order in Form DRC-07.

2. The learned counsel for the petitioner would submit that the petitioner is a registered dealer under the CGST and TNGST Acts and they are regularly filing GSTR-1 and GSTR-3B returns. In July 2022, the petitioner mistakenly claimed Input Tax Credit (ITC) on the purchase of four motor cars from M/s Ramani Cars Private Limited, which was ineligible under Section 17(5) of the CGST/TNGST Act, 2017. Upon realizing the mistake crept-in, the petitioner promptly reversed the ITC amounting to Rs.1,78,252.23 (CGST), Rs.1,78,252.23 (TNGST), and Rs.2,10,084.81 (Cess) in the GSTR-3B return for March 2023. While so, the first respondent issued a scrutiny notice in February 2023, followed by a pre-show cause notice in April 2023 and a show cause notice in September 2023, all alleging the wrongful ITC claim.

Thereafter, the impugned assessment order was passed demanding the already reversed ITC and imposing penalties and interest additionally.

3. The learned counsel would further submit that the petitioner was unaware of these notices due to the introduction of a new "View Additional Notices and Orders" feature on the GST portal, which was not adequately communicated. Stating that the statutory appeal period had already expired, the learned counsel prayed for quashing the impugned assessment order.

4. On the other hand, the learned Government Advocate (Taxes) appearing for the first respondent and the learned Standing Counsel appearing for the second respondent made their submissions supporting the order impugned herein.

5. Heard both sides and perused the records.

6. The facts remain that the petitioner had purchased four motor cars for the usage of passenger service. In the course of filing their returns, they mistakenly claimed Input Tax Credit (ITC) on these purchases, which was not permissible under the relevant provision of law, as the vehicles were intended for personal use rather than for business purposes. On realising the

same, they voluntarily reversed the wrongly availed ITC in their March 2023 return, before the closing of the financial year. However, the first respondent passed the assessment order, after issuing pre-show cause notice and show cause notice. According to the petitioner, they did not aware of the said notices served through "view additional notices and orders" portal and hence, they were unable to file their reply to the same and hence, an opportunity be provided to them to substantiate their claim.

7. Considering the facts and circumstances of the case, this court in order to provide an opportunity to the petitioner, is inclined to set aside the order passed by the first respondent. Accordingly, the order dated 20.02.2024 is set aside and the matter is remanded to the first respondent for fresh consideration. The petitioner shall file their reply/objection to the show cause notice, along with the required documents, if any, within a period of two weeks from the date of receipt of a copy of this order. On filing of such reply/objection by the petitioner, the respondent shall consider the same after issuing a 14 days clear notice by fixing the date of personal hearing and thereafter pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

8. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently connected miscellaneous petitions are closed.

30.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

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To

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