IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.24807 of 2024
and
W.M.P.Nos.27154 & 27155 of 2024

M/s.Fabart Clothing India Private Limited,
Rep. by its Director Shri.Kamlesh Jain,
20/200, Thirunagar Colony 4th Street,
Near Muthumariamman Kovil,
Erode, Tamil Nadu - 638 003. ... Petitioner

Vs.

1.The Assistant Commissioner (State Tax),
Park Road Assessment Circle,
No.1 Brough Road,
Erode - 638 001 (Tamil Nadu).

2.The Joint Commissioner of Sales Tax,
46, Pudur Ring Road, Anaikal Palayalam,
Erode - 638 002 (Tamil Nadu). ... 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 first respondent in Ref.ZD330823079399U and quash the order dated 14.08.2023.

For Petitioner : M/s.Hema Muralikrishnan

For Respondents : Ms.Amirta Poonkodi Dinakaran
Government Advocate (Taxes)

ORDER

This writ petition has been filed to quash the order dated 14.08.2023 passed by the respondent.

2. The learned counsel for the petitioner submits that the petitioner is a registered dealer under the GST Act and has been consistently filing GSTR-1 and GSTR-3B returns. However, the first respondent passed the impugned order on 14.08.2023, demanding payment of Rs.2,48,667/- each under SGST and CGST and penalty of Rs.24,867/-. The learned counsel further contends that the petitioner did not receive any prior notice and they came to know about the demand only after an enquiry, discovering that the notice and communications had been uploaded on the portal. According to the learned counsel, the tax comparison and liabilities statement for the year 2019-2020, downloaded from the website clearly reveals that the cumulative excess of ITC claimed by the petitioner is only Rs.1,875/- and the description also indicates an excess of ITC of Rs. 2,150.52 under IGST. In such circumstances, it cannot be said that the petitioner has claimed excess ITC of Rs.2,48,667/- under SGST and Rs.2,48,667/- under CGST. The learned counsel would also contend that the petitioner filed a rectification petition on

28.05.2024. While so, the first respondent is taking coercive measures for recovery of tax. Hence, the learned counsel prays to set aside the order passed by the first respondent.

3. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (taxes) appearing for the respondents, made her submissions supporting the order impugned herein.

4. Heard both sides and perused the records.

5. According to the petitioner, the claim of ITC in excess is only Rs.1,875/- and even as per the description, an excess ITC of Rs.2150.52 under IGST has been claimed by the petitioner. However, the first respondent alleged that the petitioner has claimed excess ITC of Rs.2,48,667 under SGST and Rs.2,48,667/- under CGST. It is further stated that the petition under section 108 of the CGST Act, 2017 is pending before the second respondent for rectification of the mistake. It is also the grievance of the petitioner that the notices and communications were sent only through the "View Additional Notices and Orders" in the common portal and hence, they were unable to know about the passing of the order impugned herein. While so, the impugned demand raised by the first respondent is arbitrary, illegal and in

violation of the principles of natural justice. This court finds some *bona fide* in the submissions so made by the petitioner.

6. Therefore, in order to provide an opportunity to the petitioner, this writ petition is disposed of in the following terms:

(i)The order dated 14.08.2023 is set aside and the matter is remanded to the first respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, to the show cause notice, if any, within a period of two weeks from the date of receipt of a copy of this order.

(iii) On filing of such reply/objection by the petitioner, the first respondent shall consider it after issuing a clear 14-day notice for a personal hearing. The first respondent shall particularly take into account the discrepancy of Rs.2,150.52 in the tax comparison and liabilities statements shown in the portal, compared to the amounts stated in the impugned order, i.e., Rs.2,48,667/-. Thereafter, the respondent shall pass appropriate orders on merits and in accordance with the law, as expeditiously as possible.

(iv) The Bank concerned is directed to defreeze the petitioner's bank account.

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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KRISHNAN RAMASAMY.J.,

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