IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.26335 of 2024 &
W.M.P.Nos.28784 & 28785 of 2024

R.Mohanraj & Co.,
Represented by its Partner R.Mohanraj,
9/4, Opposite KPN Travels,
Mettur Road, Erode,
Erode - 638 011. ... Petitioner

Vs.

The Commercial Tax Officer,
Mettur Road, Erode,
Erode, Tamil Nadu. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent and quash the order under Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017 / Central Goods and Service Tax Act, 2017 having GSTIN 33AAMFR8423Q1Z1, dated 20.04.2024 having Reference No.ZD3304241816611 along with summary of the order dated 24.04.2024 having Reference No.ZD3304241816611 (impugned order) GST DRC-07 passed by the respondent for the FY 2018-2019.

For Petitioner : Mr.N.V.Narayanan

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

ORDER

This writ petition has been filed seeking to quash the order passed under Section 73 of the Tamil Nadu Goods and Services Tax Act, 2017 / Central Goods and Services Tax Act, 2017, along with the summary of the order in Form GST DRC-07, dated 24.04.2024, issued by the respondent for the financial year 2018-2019.

2. The learned counsel for the petitioner submits that during the financial year 2018-19, the petitioner filed monthly returns in Form GSTR-3B, disclosing an outward supply of Rs.5,35,82,254/- and a total output tax liability of Rs.96,44,804/-. The aforementioned tax liability was duly paid through the utilization of input tax credit and in cash. However, when filing the GSTR-9, the petitioner inadvertently disclosed the tax payment as 'Nil', instead of the actual payment of Rs.96,44,804/- (comprising Rs.36,05,048/- towards CGST, Rs.36,05,048/- towards SGST, and Rs.24,37,708/- towards IGST). During scrutiny under Section 61, the respondent pointed out the discrepancy between the gross tax payable and the tax paid as per Form GSTR-9. Subsequently, the respondent issued a summary show cause notice

dated 27.12.2023 in Form GST DRC-01, followed by reminder notices on 03.04.2024 and 18.04.2024. The learned counsel further submits that neither the notice nor the reminders were physically served on the petitioner; instead, they were uploaded only on the GST common portal. Thereafter, the respondent passed the impugned order on 24.04.2024, raising a demand of Rs.2,05,32,993/-. The learned counsel would further submit that the petitioner had already deposited the entire tax with the concerned authority, and the discrepancy arose due to clerical errors made while filing Form GSTR-9, and hence, learned counsel prays to set aside the impugned orders

3. Heard the learned Additional Government Pleader (Taxes) appearing for the respondent, who made his submissions supporting the orders impugned herein.

4. The primary contention of the learned counsel for the petitioner is that the discrepancy in the GSTR-9 filing arose solely due to an inadvertent clerical error, despite the petitioner having already discharged the entire tax liability through the proper channels, viz., the utilization of Input Tax Credit (ITC) and cash payments, as disclosed in the GSTR-3B filings. The learned counsel emphasizes that the petitioner acted in good faith and had no

intention to evade tax, as evidenced by the timely payments made. However, the impugned order was passed without providing the petitioner with an opportunity for a personal hearing. The petitioner was unaware of the notices issued by the respondent, as they were only uploaded on the GST common portal and were not physically served, thereby depriving the petitioner of an effective opportunity to respond to the show cause notice or to correct the clerical mistake in the GSTR-9 filing. Considering these circumstances, this Court is of the view that allowing the impugned order to remain in force without providing the petitioner an opportunity to rectify the error and present their case would not be fair. It is therefore necessary, in the interest of justice, to set aside the impugned order and the summary order, subject to verification of the petitioner's full payment of tax already made by the petitioner. The setting aside of the orders will take effect upon such verification. The petitioner is directed to submit their reply/objections, along with supporting documents, within two weeks from the date of receipt of a copy of this order. Upon receipt of the petitioner's reply, the respondent shall consider the same and issue a clear notice of 14 days, scheduling a date for a personal hearing. Thereafter, the respondent shall pass appropriate orders on merits and in accordance with the law, as expeditiously as possible.

5. With the above directions, the writ petition is disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

06.09.2024

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

r n s

To

The Commercial Tax Officer,
Mettur Road, Erode,
Erode, Tamil Nadu.

KRISHNAN RAMASAMY.J.,
r n s

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