IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.31459 of 2024
& W.M.P.Nos.34169 & 34172 of 2024

M/s.Arangcons,
Rep by its Partner,
Mr.K.Aranganathan,
123/1B, Anna Salai,
Kovilambakkam,
Chennai 600 129.

... Petitioner

Vs.

The Deputy Commissioner of Central Tax,
Office of the Deputy Commissioner of CGST
& Central Excise, Pallavaram Division,
Chennai Outer Commissionerate,
No.6, Sridevi Temple Towers,
2nd Main Road, Sembakkam,
Chennai 600 073.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the respondent in Order-in-Original No.195/2024-AC/DC in DIN-

20240859XL030000B323 dated 12.08.2024 relating to the assessment year 2019-2020 and quash the same as passed contrary to the provisions of the CGST/TNGST Act, 2017 and also contrary to the principles of natural justice.

For Petitioner	:	Mr.P.Rajkumar
For Respondent	:	Mr.K.S.Ramaswamy, Senior Standing counsel

ORDER

This writ petition has been filed challenging the impugned order dated 12.08.2024 passed by the respondent.

2. Mr.K.S.Ramaswamy, learned Senior Standing counsel, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in this case, during the Assessment Year 2019-2020, the petitioner had claimed excess ITC for a sum of Rs.99,74,692/-. When the came to know about the wrong availment of ITC, they had reversed the said ITC in the month

of June, 2019. In this regard, a show cause notice dated 06.05.2024 was issued by the respondent. Instead of filing the reply for the said show cause notice, the petitioner's representative had appeared before the office of the respondent and orally explained that there was no difference between GSTR-2A and GSTR-3B and the petitioner is not liable to pay any interest as demanded in the show cause notice. However, without considering the said oral submission, the impugned order came to be passed by the respondent on 12.08.2024. Hence, this petition has been filed.

4. On the other hand, the learned Senior Standing counsel appearing for the respondent would submit that the respondent had issued the show cause notice to the petitioner. However, the petitioner had failed to file their reply within time. Further, he would submit that initially, the petitioner had wrongly availed ITC in the month of May, 2019. Thereafter, though the petitioner had reversed the ITC during the month of June, 2019, they are liable to pay interest for the availment period. Therefore, he requested this Court to remit the matter back to the respondent on terms.

5. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondent and also perused the materials available on record.

6. In the case on hand, it is admitted by the petitioner that they had wrongly availed ITC for a sum of Rs.99,74,692/- during the month of May, 2019. Thereafter, when they came to know about the wrong availment of ITC, they had immediately reversed the ITC during the month of June, 2019. In this regard, a show cause notice was issued by the respondent. However, no reply was filed by the petitioner. Under these circumstances, the impugned order came to be passed by the respondent.

7. Further, it is clear that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order was passed in violation of principles of natural justice since it is just and necessary to provide an

opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 12.08.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 12.08.2024 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay a sum of Rs.2,00,000/- to the respondent within a period of four weeks from today (28.10.2024) and the setting aside of the impugned order will take effect from the date of payment of the said amount.

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

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

(iv) It is also made clear that subject to the outcome of the assessment order, the amount deposited by the petitioner, i.e., a sum of Rs.2,00,000/-, shall be utilised and adjusted towards the tax amount along with interest, penalty, late fee, etc.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

28.10.2024

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

To

The Deputy Commissioner of Central Tax,
Office of the Deputy Commissioner of CGST

& Central Excise, Pallavaram Division,
Chennai Outer Commissionerate,
No.6, Sridevi Temple Towers,
2nd Main Road, Sembakkam,
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KRISHNAN RAMASAMY.J.,

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