IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.31648 of 2023
and
W.M.P.Nos.31272, 31273 and 32741 of 2023

Prabha Automotive Engineers Pvt. Ltd
(Successor to the erstwhile firm Prabha Engineers)
Represented by its Managing Director Mr.S.Kubher
1825, 18th Main Road, Anna Nagar West,
Chennai 600 040. ..Petitioner

Vs.

Deputy Commissioner (ST)-II
Large Taxpayers Unit,
Chennai 35. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari call for the records in the file of the Respondents and issue a writ, direction or order in the nature of writ of Certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India and quash the order under section 73 of the TNGST Acts dated 27.09.2023 and the consequent summary of the Order in Form GST DRC -07 dated 27.09.2023 both passed by the Respondent and both having Reference Number ZD330923215530Q.

For Petitioner : Mr.N.V.Balaji

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 27.09.2023 relating to the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in business of manufacture of auto components and is registered under the Goods and Services Act, 2017. During the relevant period viz., 2017-18, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was found that there was an excess availment of Input Tax Credit vis-a-vis Input Tax Credit reported in annual return in GSTR-9. Subsequently, a notice was issued to the petitioner in ASMT 10 on 03.02.2023. In response to the said notice, it was submitted by the learned counsel for the petitioner that filling up S.No.14 of GSTR-9C for the financial year 2017-18 was not mandatory and thus certain columns in GSTR-9C was left unfilled. Pursuant thereto, a notice was issued in Form DRC-01A dated 26.05.2023 proposing to levy tax on an amount of Rs.71,42,23,732 shown as non-reconciled in GSTR-9C.

3. It is submitted by the learned counsel for the petitioner that the petitioner

responded to the notice dated 26.05.2023 vide its reply dated 09.06.2023 wherein it was indicated that reconciliation of S.No.14 in GSTR-9C has been made and the same was enclosed. Thereafter, a Show Cause Notice dated 28.07.2023 was issued, calling upon the petitioner to submit its reply along with supporting documents. The petitioner submitted its reply to the said Show Cause Notice on 28.08.2023 along with Annexures, whereby the petitioner reconciled ITC as contemplated under Entry 14 of Form GSTR-9C. The relevant extract is set out hereunder:

Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of accounts.(GSTR9C Table 14):

Description	***Value***	***Amount of Total ITC***	***Amount of eligible ITC availed***
Purchases	*2721557008*	*655237897*	*655237897*
Freight / Carriage	*100507771*	*1000637*	*1000637*
Power and Fuel Costs	*22554564*		
Imported goods (Including received from SEZ)			
Rent and Insurance Expense	*1098260*	*7803*	*7803*
Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			
Royalties			
Employee's Cost (Salaries, Wages, Bonus etc.)	*192525059*	*32544196*	*32544196*

Description	*Value*	*Amount of Total ITC*	*Amount of eligible ITC availed*
Conveyance charges			
Bank Charges	*555000*	*99900*	*99900*
Entertainment Charges			
Stationery Expenses (including postage etc.)			
Repair and Maintenance	*64272393.41*	*11415763*	*11415763*
Other Miscellaneous expenses	*10038117.31*	*480064*	*480064*
Capital goods	*100748064.9*	*7672238*	*7672238*
Any other expense 1	*26271185.76*	*4752657*	*4752657*
Any other expense 2	*3500248*	*273169*	*273169*
Any other expense 3 (RCM ITC against RCM payment in GSTR 3B)	*23254818*	*1617951*	*1617951*
Total	***3266882489***	***715102275***	***715102275***

Less (ITC Not availed 17-18 and the same availed in FY 2018-19 as mentioned in GSTR 9C (FY 2017-18) Table 12			*-8,78,543*
ITC availed in the FY 2017-18			*714223732*

ITC claimed in Annual Return (GSTR9)			*71,42,23,732*

Difference			***0***

You will observe that there is no difference in ITC availment.

We are enclosing herewith some of the invoices randomly chosen for your ready reference as total no. of invoices are more than fifty thousand in numbers. If you need any further details, we will be happy to provide.

4. Importantly, it was made clear in the petitioner's reply that sample invoices were submitted as the total number of invoices / documents was voluminous and runs to several thousands. However, the petitioner clarified that in case the assessing authority required any specific invoices, they were ready and willing to furnish the same.

5. The present writ petition challenges the impugned order on the premise that it proceeds on the basis that the petitioner had not filed the ITC register or line-wise item-wise purchase list or purchase invoices to substantiate their claim. It is submitted by the learned counsel for the petitioner that if the respondent authority was of the view that the documents filed were inadequate or insufficient, they ought to have put the petitioner on notice. The respondent authority has passed the orders without even intimating the petitioner of the need to furnish the documents in respect of all transactions. The petitioner would have furnished the same, if he was duly intimated. It was thus submitted that the impugned order suffers from

violation of principles of natural justice, inasmuch as the petitioner had indicated in response to DRC-01 that sample invoices for the relevant period were being produced and the entire set of the invoices would also be provided, if so desired. It was submitted by the learned counsel for the petitioner that if one final opportunity is provided, the petitioner would produce the necessary documents and explain the alleged discrepancies.

6. To a pointed question as to why was the impugned order passed without intimating the petitioner to produce documents for all the transactions, despite a specific request having been made by the petitioner vide letter dated 28.08.2023, the learned counsel for the respondent would submit that petitioner may submit their objections along with supporting documents and orders would be passed afresh.

7. In view thereof, the impugned order is set aside. The petitioner shall treat the impugned order of assessment as a Show Cause Notice and shall submit its objections within a period of two (2) weeks from the date of receipt of a copy of this order along with relevant reconciliation statement and supporting documents/material. If any such objections are filed, the same shall be considered

by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the objections are not filed within the stipulated period, i.e., two weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

8. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed. Further, in view of the endorsement made by the learned counsel for the petitioner that the petition for raising additional grounds is not pressed, the W.M.P.No.32741 of 2023 stands closed.

12.11.2024

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
shk

<u>MOHAMMED SHAFFIQ, J.</u>

shk

To

Deputy Commissioner (ST)-II
Large Taxpayers Unit,
Chennai 35.

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