IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No. 32075 of 2024
and
W.M.P.Nos. 34836 &34837 of 2024

M/s.Sri Krishna Mills,
rep. by its Proprietor,
Mr.K.Arunachalamoorthy. ...Petitioner

Vs.

1. The State Tax Officer,
Inspection Group-I,
Office of the Joint Commissioner (ST)
Tiruppur Intelligence Division,
5/147, AEPC Building,
Kaikatti Pudur,TIruppur Main Road,
Avinashi – 641 654.

2. The State Tax Officer,
Intelligence Group-V,
Office of the Joint Commissioner (ST)
Tiruppur Intelligence Division,
5/147, AEPC Building,
Kaikatti Pudur,TIruppur Main Road,
Avinashi – 641 654.

3. The Joint Commissioner (ST)
Tiruppur Intelligence Division,
5/147, AEPC Building,
Kaikatti Pudur,TIruppur Main Road,
Avinashi – 641 654. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the impugned proceedings of the first respondent in Reference No.33BCRPM6437P2ZR dated 22.06.2024 relating to the assessment year 2022-2023 and the connected order passed under Section 74 and the summary of the order dated 22.06.20204 in Form GST DRC-07 both issued in Reference No.ZD3306242183081 and to quash the same as passed contrary to the provisions of the CGST/TNGST Act, 2017 and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.T.N.CKaushik
Additional Government Pleader (T)

Order

The challenge in this Writ Petition is to the order passed by the first respondent dated 22.06.2024 and the connected order passed under Section 74 and the summary of the order dated 22.06.20204 and to quash the same.

2. Mr.P.Raj Kumar, the learned counsel appearing for the petitioner assailed the impugned order passed by the first respondent by contending that the impugned order is only an assessment order passed under Section

73 of the TNGST Act, but, none of the ingredients to make assessment under the said section is present in the petitioner's case, as there was no allegation of fraud or wilful misstatement or suppression of facts is available in order to invoke Section 74 against the petitioner.

2.1 Further, it is contended by the learned counsel that the first respondent, while dealing with Defect No.7, went wrong in arriving at the difference between the invoice value raised by the petitioner in invoice Nos.79 and 81 and the assessable value mentioned in the e-way bills raised by the petitioner without appreciating the fact that the assessable value mentioned in the E-way bills were wrongly mentioned as "Rs.28800000/- instead of taxable value of Rs.28,80,000/-in the invoice No.79 dated 22.11.2022 and also wrongly mentioned as Rs.34440000 instead of the taxable value of Rs.34,44,000/-in the invoice No.81 dated 09.12.2022 and that the same is due to typographical error. The learned counsel furthermore submitted that the reason for non-generation of e-way bills at the supplier end is due to the fact that the purchases were made from M/s.Soundarya Sizing Mils, which is a partnership Firm and also a sister concern of the petitioner and since both the concerns are running in the same premises, there was no movement of goods, however, in respect of all the suppliers, who have sold the goods to the petitioner, the petitioner has filed proof of purchases such as purchase invoices, proof of payment or consideration for the purchases through bank channels and also proof of transport for receipt or delivery of the goods at the petitioner's place. Though all these aspects has been clearly stated in the objection filed by the petitioner, the same were rejected by the first respondent without any valid reasons. Therefore, the learned counsel prayed for setting aside the impugned orders, as the same are not tenable for the reasons stated above.

3. Per contra, Mr.T.N.CKaushik, learned Additional Government Pleader (T) for the respondents fairly submitted that error crept in the E-way bills has not been taken into consideration while passing the impugned order.

4. I have given due considerations to the submissions made on either side and perused the materials available on record.

5. The petitioner is a manufacturer of cotton Grey cloth. The petitioner, being a registered dealer on the files of the respondent under the provisions of the CGST and TNGST Act, 2017, has been filing GSTR1 and GSTR-3B returns regularly. However, the petitioner's place of business was inspected by the second respondent on 09.10.2023, pursuant to which, a show cause notice and summary of the show cause notice in Form GST DRC-1 dated 02.01.2024 were issued to the petitioner; that the petitioner on receipt of such notices, attended the personal hearing on 25.03.2024 and filed their objections on 18.04.2024 and also paid tax on 17.04.2024. However, the first respondent, without considering the submissions made by the petitioner during the personal hearing and without appreciating the reply/objection filed by the petitioner in a proper perspective, passed the impugned order dated 22.06.20204, whereby, the ITC availed by the petitioner was reversed and tax along interest/penalty has been levied on the ground of non-reporting of taxable supplies in GSTR-1 and GSTR 3B and that the petitioner has not generated E-way bills but only raised invoices without supply of goods.

6. As rightly contended by the learned counsel appearing for the petitioner, the impugned order passed by the first respondent is not tenable. The first respondent, while dealing with Defect No.7, went wrong in arriving at the difference between the invoice value in mentioned Nos.79 and 81, raised by the petitioner and the assessable value mentioned in the e-way bills raised by the petitioner without appreciating the fact that the assessable value mentioned in the E-way bills were wrongly mentioned as "Rs.28800000/-" instead of taxable value of Rs.28,80,000/-in the invoice No.79 dated 22.11.2022 and similarly, in the invoice No.81 dated 09.12.2022, wherein, the assessable value was wrongly mentioned as Rs.34440000 instead of the taxable value of Rs.34,44,000/-, and that the said errors are due to typographical error and those this was pointed out by the petitioner, in their reply/objection, the first respondent failed to take into consideration of the aforesaid vital aspect and rejected the same, and simply proceeded on the basis that the suppliers have not generated e-way bills for the sales made to the petitioner and arrived at a wrong conclusion that the petitioner has not generated E-way bills but only raised invoices without supply of goods.

7. The first respondent has failed to note that the reason for non-generation of e-way bills is due to the fact that the purchases were made from M/s.Soundarya Sizing Mils, which is a partnership Firm and also a sister concern of the petitioner and both the concerns are running in the same premises, therefore, there is no necessity for movement of goods and so it is not possible to generate E-way bills. Therefore, the impugned order passed by the first respondent merely on the footing that the selling dealers have not raised E-way bills for the supplies made by them to the petitioner cannot be a ground for reversing the ITC and thereby, levying tax/interst/penatly, when the fact remains that the the petitioner has filed proof of purchases such as purchase invoices, proof of payment or consideration for the purchases through bank channels and also proof of transport for receipt or delivery of the goods at the petitioner's place. Thus, in the absence of any material evidence of fraud/wilful mis-statement/suppression of fact, invocation of notice under Section 73 or 74 of the TNGST Act and assessment made thereunder is not sustainable.

8. Thus, in the light of the above facts and circumstances of the case, this Court is inclined to set aside the impugned orders.

9. Accordingly, this Court passes/issues the following orders/directions:-

i) The impugned proceedings of the first respondent dated 22.06.2024 relating to the assessment year 2022-2023 and the connected order passed under Section 74 and the summary of the order dated 22.06.20204 in Form GST DRC-07 are set aside.

ii) Consequently, the matter is remanded to the first respondent for fresh consideration, in which case, the first respondent is directed to afford an opportunity of personal hearing by issuing a clear 14 days notice and after hearing the petitioner and going through the reply, shall decide the matter in accordance with law.

10. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.10.2024

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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