IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35853 of 2024

Technochem Distributors
Rep by its Partner, Paresh Vasa : Petitioner

versus

The State Tax Officer,
Nungambakkam Assessment Circle,
88, Mayor Ramanathan salai,
Chetpet, Chennai 31 : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling the records on the file of the respondent herein in Show cause Notice reference No.ZD3305243287675 dated 31.5.2024 and order reference No.ZD33AAHFT730D1ZQ dated 30.8.2024 and quash the same and consequently direct the respondent to give an opportunity of being heard to petitioner.

For Petitioner : Mr.A.Ganesh

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

ORDER

The present writ petition is filed challenging the impugned order dated 30.8.2024 on the limited ground that impugned order proceeds on the basis that as though no reply has been filed, which is contrary to the facts.

2. The petitioner is a partnership firm engaged in the supply of leather related chemicals. The petitioner is registered dealer under Tamil Nadu Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. On scrutiny of the monthly returns filed by the petitioner, the following defects were noticed :

i) Mismatch between GSTR3B and GSTR 1

ii) Mismatch between GSTR3B and GSTR2A

iii) Mismatch between GSTR1 and E-waybill generated regarding intrastate transaction of Rs.1415176.00

iv) Mismatch between GSTR1 and E waybill generated regarding intrastate transaction 1444892.00.

2.1. Subsequently, a Show Cause Notice was issued on 31.05.2024. The petitioner had filed its reply on 25.06.2024 in response to the show cause notice.

However, without considering the same, the impugned order came to be passed.

3. It was pointed out by the learned counsel for the petitioner that personal hearing was not granted as would be evident from the following Table, which forms part of the show cause notice.

Sr.No.	***Description***	***Particulars***
1	Date by which reply has to be submitted	30-6-2024
2	Date of personal hearing	NA

4. To the contrary, it is submitted by the learned Government Advocate for the respondent that this is an appealable order and when there is an effective alternate remedy, this Court should not normally exercise it discretion under Article 226 of the Constitution of India.

5. This Court is conscious of the fact that normally jurisdiction under Article 226 would not be entertained when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction and has exceptions carved out to the above rule, one such exception is where the order is made in violation of principles of natural jsutice.

6. This Court is of the view that the impugned order suffers from principles of natural justice inasmuch as despite the fact that the impugned order extracts the entire reply, however proceeds to pass the impugned order on the premise that the petitioner has not filed its reply. The relevant portion is extracted hereunder:

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Taxpayer Reply:

The taxpayer have replied dated 25.06.2024 and their reply stated is as below

We TECHNOCHEM DISTRIBUTORS having GSTIN: 33AAHFT0730Q1ZQ are engaged in trading of goods.

With respect to the GST Show Cause Notice issued by your office for the FY 2019-20, we would like to reiterate our earlier submission in Form GST ASMT-11 as follows: -

1. OUTPUT MISMATCH (GSTR 3B vs 1)

It is observed that the amounts pertaining to GSTR 3B and GSTR 1 mentioned in the notice are incorrect. In this regard, we have tabulated the amounts pertaining to the filed GSTR 3B/GSTR 1 vis-à-vis the amounts mentioned in the ASMT -10 notice hereunder.

Particulars	Turnover	IGST	CGST	SGST
GSTR-1 - as per Notice	3,70,65,243.75	97,404.12	32,69,914.83	32,69,914.83
GSTR-3B - as per Notice	[illegible]	99,612.00	32,79,[illegible].00	32,79,[illegible].00
Mismatch	**4,69,[illegible].79**	**-2,207.88**	**-10,055.83**	**-10,055.83**
Less: Credit notes declared in monthly GSTR-1 returns - not considered in the notice. Attaching herewith GSTR-1 return copies for the period Apr'19 to Mar'20 in "Annexure-1"	-2,93,786.25	-22,903.60	15,229.53	15,229.53
Add: Inward RCM liability added to GSTR-3B tax liability in Notice - not reportable in GSTR-1 and hence the difference	-	2,207.75	4,686.02	4,686.02
Add: Credit Note no. "19TECHASRR2" issued in Feb'20 - declared in GSTR-1, but missed out in GSTR-3B return. However, the same has been adjusted in GSTR-3B in subsequent months in FY 20-21. GSTR-1 copy of Feb'20 enclosed in "Annexure 1". Copy of Annual return in GSTR-9 attached in "Annexure 2"	1,21,570.00	21,916.60		
Adjusted difference	-0.10	-0.13	-1.68	-1.68

2. INPUT MISMATCH (GSTR 3B vs 2A)

It is observed that the inputs as per the updated/live GSTR 2A is greater than the "ITC as per GSTR2A" as mentioned in the notice. Revised reconciliation of GSTR 3B vs updated/live GSTR 2A has been given below for your perusal.

Particulars	CGST	SGST
ITC as per GSTR-3B (As per table 4(C) - as per Notice	4,01,645.78	4,01,645.78
ITC as per GSTR2A - as per updated/live GSTR-2A	2,08,156.38	2,08,156.38
Mismatch - as per updated GSTR-2A	**1,93,489.40**	**1,93,489.40**
Less: RCM input claimed under Table 4(A)(3) included for which tax has been paid on reverse charge basis and credit has been availed	-4,585.02	-4,585.02
Less: Purchase Inv No. 006, dt. 25/03/2020 not filed by supplier in their monthly GSTR-1 & GSTR-3B. Hence, the input tax credit is not reflecting in our GSTR-2A. However, the supplier has made the tax payment through DRC-03 challan and given us the copy of the challan. Copy of the purchase invoice & DRC-03 challan attached herewith in "Annexure-3"	-2,52,000.00	-2,52,000.00
Adjusted difference**	**-63,075.62**	**-63,075.62**

*Negative difference, hence ignored

3. TDS MISMATCH (GSTR 7 vs 3B vs 1)

There is no TDS Mismatch. Hence ignored

4. TCS MISMATCH (GSTR 8 vs 1)

There is no TCS Mismatch. Hence ignored

5. GSTR-9 VERIFICATION

A. TAX PAYABLE VARIATION

Description	Taxable Value	SGST	CGST	IGST	Cess
Supplies and advances on which tax to be paid (Tbl:4N) [Actual liability as per GSTR9]	3703[illegible].50	996[illegible].87	3679259.32	3279[illegible].32	-
Supplies and advances on which tax to be paid (Tbl:9(2)) [Liability modified by Taxpayer in GSTR9]	-	99702.00	3679261.00	3279761.00	-
Difference*		-1.68	-1.68	-0.[illegible]	-

*Difference is due to round off.

B. ITC VARIATION

With respect point 5(B) "ITC Variation", we are providing here under our detailed reconciliation along with supporting documents enclosed as annexures.

	IGST	CGST	SGST
Total amount of ITC availed through GSTR3b (Tbl:6A)*	42,05,[illegible].06	4,01,645.78	4,01,645.78
Total amount of ITC availed through GSTR9 (Tbl:6)	42,05,[illegible].06	4,01,645.78	4,01,645.78
DIFFERENCE (GSTR3B-GSTR9)			
Total amount of ITC as per GSTR 2A (Tbl:8A)	3,03,116.63	2,08,356.38	2,08,156.38
DIFFERENCE (GSTR3B-GSTR2A)	38,72,882.43	1,93,489.40	1,93,489.40
Less: RCM input claimed under Table 4(A)(3) in GSTR-3B returns, for which tax has been paid on reverse charge basis included in "ITC availed through GSTR-3B" above	-5,023.01	-6,565.02	-6,565.00
Less: Purchase Inv.No. 006, dt. 27/03/2020, not filed by supplier in their monthly GSTR-1 & GSTR-3B. Hence, the input tax credit is not reflecting in our GSTR-2A. However, the supplier has made the tax payment through DRC-03 challan and given us the copy of the challan. Copy of the purchase invoice & DRC-03 challan attached herewith in "Annexure-3"	-	-2,50,000.00	-2,50,000.00
Less: Input IGST on import of goods claimed under Table 4(A)(1) on which tax has been paid on reverse charge basis included in "ITC availed through GSTR-3B" above. However, these IGST inputs are reflecting in our GSTR 2A reports. Attaching herewith consolidated GSTR-2A report & BOE copies as "Annexure-4", for your perusal	-38,[illegible]		
Adjusted difference**	-15,[illegible].58	-63,075.62	-63,075.62

*Negative Difference, hence ignored

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C. DATA TO BE VERIFIED

iven below the reconciliation of data declared under "Part V - Table 11" of GSTR-9 – Annual Return for FY 2019-20

Particulars	Taxable Value	IGST	CGST	SGST
Supplies / tax reduced through Amendments (-) (net of credit notes)	-	21,900.60	-	-
Reconciliation				
Less: Credit Note no. "19TECHASRR2" issued in Feb'20 - declared in GSTR-1, but missed out in GSTR-3B return. However, the same has been adjusted in GSTR-3B in subsequent months of FY 20-21. Hence, it has been reported under Part V-Table 11, in the annual return in Form GSTR-9. GSTR-1 copy of Feb'20 enclosed in "Annexure 1"; Copy of Annual return in GSTR-9 attached in "Annexure 2"	-	-21,900.60	-	-
Adjusted difference	-	-	-	-

5. INTEREST PAYABLE (LATE RETURN FILING)

There is no interest liability. Hence ignored

8. E-WAYBILL VERIFICATION

A. OUTWARD E-WAYBILL

i) Interstate

It is noted that there are no differences between the GSTR-1 sale bills vs. E-waybills generated under the supply type "Interstate"

ii) Intrastate

Type of Transaction	S.No.	Period	Ewaybill to be generated(GSTR1)	Ewaybill Generated	Difference(GSTR1-EWB)	Invoice Count(GSTR1)	Invoice Count(EWB)
Intrastate	1	2019-20	14,15,178.20	-	14,15,178.20	10	0
	2	2019-20	2,48,36,819.24	2,48,36,819.24	-	105	105

With respect to difference of 10 no. of bills as given in S.No. 1 above, following is the month wise breakup:

1. May'19 – 7 Nos.
2. Sept'19 – 1 Nos.
3. Oct'19 – 1 Nos.
4. Nov'19 – 1 Nos.

(23)

Proper Officer Remarks:

A Show Cause Notices in DRC-01 has been issued to the Taxpayer and the taxpayer replied for the SCN in the 2nd reference cited.

In this regard, the taxpayer has not responded for the Personal Hearing issued and not offered their further clarification for the uncleared points.

Hence, it is presumed that the taxpayer has nothing to say anything in this regard, and the reply not filed by the taxpayer. Hence it is confirmed and hereby pass the order under section 73 based on the merits and available records, in accordance with law. As such, as taxpayer is liable to pay the tax, interest and penalty as per section 73 of the Act, as detailed below:

REVENUE ABSTRACT

Act/Year	Tax	Penalty	Interest
SGST/ 2019-20	257922	25792	202386
CGST/ 2019-20	257922	25792	202386
IGST/ 2019-20	3872862	387286	3038674

An electronically generated summary of this order specifying the amount of Tax, Penalty and Interest payable by the taxable person is electronically uploaded in Form GST DRC-07 in the common portal

RUTHIRAKOTTI N

State Tax Officer
Nungambakkam Assessment Circle.

7. That apart, as could be seen from the discussion supra, the show cause notice does not provide any opportunity of personal hearing to the petitioner.

8. For the above reasons, the impugned order is liable to be set aside on the ground of violation of principles of natural justice. It is open to the petitioner to the treat the impugned order as a show cause notice and submit its objection, within a period of two (2) weeks from the date of receipt of a copy of this order, which was agreed to by both the learned counsels. If any such reply is 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.

9. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, W.M.P.Nos.38716 and 38718 of 2024 are closed.

26.11.2024

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

To
The State Tax Officer,
Nungambakkam Assessment Circle,
88, Mayor Ramanathan salai,
Chetpet, Chennai 31

MOHAMMED SHAFFIQ, J.

mrn

W.P. No.35853 of 2024

26.11.2024