IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36097 of 2024
and
W.M.P.Nos.38998 and 38999 of 2024

Tvl.P.Baskar,
(Represented by its Proprietor,
Mr.P.Baskar),
28-A, Kalliappa Gounder Street,
Dharmapuri, Tamil Nadu 636 702. ... Petitioner

Vs.

Deputy State Tax Officer (Intelligence),
Adjudication & Legal Wing, Hosur,
3/47, Sapthagiri Complex,
Thorapalli Agraharam Village,
Adjacent to Ashok Leyland Unit-II,
Gandhi Nagar, Hosur Tk.,
Krishnagiri Dt., Tamil Nadu 635 109. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent in FORM GST DRC-07 with Reference No:ZD330924033071S dated 03.09.2024 along with detailed order in Reference No:33ADXPB2142C1Z1/2022-23 dated 03.09.2024, in so far as it relates to levy of tax on a turnover of Rs.19,73,13,006/-, and Rs.28,46,520/- and resultant interest and penalty and quash the same.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader.

ORDER

The writ petition is filed challenging the impugned order dated 03.09.2024 on the premise that it has been made in gross disregard of the reply which was filed in response to the Show Cause Notice dated 05.06.2024 and thus, suffers from violation of principles of natural justice.

2. The petitioner is a proprietory concern. The petitioner is *inter-alia* involved in the activities of providing vehicles on hire to Goods Transport Agencies (GTA). The petitioner is registered under the Tamil Nadu Goods and Service Tax Act, 2017. During the relevant period viz., 2022-23, the petitioner filed its return and paid the appropriate taxes. While so, the petitioner's place of business was inspected on the basis of authorization in terms of Section 67(1) of TNGST Act, 2017 on 15.11.2023. During the course of inspection, it was *inter-alia* noticed that there was an Excess Claim of Input Tax Credit.

3. During the relevant assessment year, the petitioner had provided service by way of renting vehicles on hire to one M/s.Zinc Food Private Ltd., who provide GTA Services. It is the case of the petitioner that the above supply is nil-rated in terms of Notification No.12/2017 Central Tax (Rate)

dated 28.06.2017. The relevant portion reads as follows:

Sr.No.	*Heading*	*Description of Service*	*Rate*
22	*9966 or 9973*	*Services by way of giving on hire- a)........... b) to a goods transport agency, a means of transportation of goods*	*NIL Rated*

4. The above supplies were proposed to be treated as liable for tax on the basis of verification of the statement under Form 26AS, which apparently revealed that apart from Government Departments, the petitioner had provided services to others, whereby TDS was deducted under Section 194C. The petitioner had not furnished the following outward supplies in GSTR-1 return, filed during the relevant period. In the absence of clarity in respect of nature of supplies, it was proposed to determine the taxability under the GST Act at the rate of 18%. The relevant portion of the Show Cause Notice dated 05.06.2024 is extracted hereunder:

<u>3.2 Services provided to Private entities</u>

Further verification of 26AS statement revealed that apart from Government Departments, the tax payer has also provided certain services to the following whereby TDS has been deducted under section 194C. But the tax payer has not furnished the following outward supplies in their GSTR-1 returns filed during the *said years. In absence of nature of supplies it was proposed to determine the taxability at the GST rate of 18% as below:*

(in Rupees)

TAN No	*Name of the Company*	*Total amount paid/credited*	*TDS deducted*	*GST rate*	*GST payable*
CHEZ03662B	*Zinc Foods Private Limited*	*197163006.50*	*1971629.96*	*18*	*3,54,89,342*
CHER19795G	*Radhakrishnan Palani*	*150000.00*	*1500.00*	*18*	*27,000*
Total		*19,73,13,006*			*6,16,54,194*

5. In response, the petitioner filed its reply on 03.07.2024 wherein it was explained in detail the nature of transaction. The relevant portion is extracted hereunder:

> *<u>(i) Payment Received from M/s Zinc Foods Private Ltd.- Rs.197163006.50/-</u>*
> *The nature of transaction involved in this case is supply of service by way of giving or renting of vehicles on hire, a means of transportation of goods road to a major player M/s Zinc Foods (P) Ltd., who provides GTA Service falling under tariff heading 9966 or 9973 is NIL rated as per Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017/ The relevant entry is as follow:-*
> *It is submitted that the registered tax payer Thiru P.Baskar (GSTIN: 33ADXPB2142C1Z1) is a civil works contractor, paying tax under GST Act on civil works contract services. The tax person is also engaged in supply of goods vehicles services*

by way of giving on hire basis to a goods transport agency (GTA) viz. M/s Zinc Foods (P) Ltd, No.3/127-D1 Swamy Nagar, Salem Road, Namakkal-637 001 during the said periods, as means of transportation of goods belonging to Tamilnadu Civil Supplies Corporation, Chennai under Transportation Agreement between the said parties to facilitate movement and transportation of commodities such as paddy, rice, sugar, dhall, wheat, oil barrels, gunnies etc. M/s Zinc Food Private Ltd., being a GTA have hired goods vehicles form the tax payer on regular basis and paid hire charges. The tax payer in turn hired goods vehicles on the basis of hire charges from Tvl. Sri Jaisakthi Transport, lent to M/s Zinc Food Private Ltd., on regular basis.

The tax payer raised Bill of supply, mentioning SAC 996601, to M/s Zinc Foods (P) Ltd., mentioning hire charges for transportation of goods as mentioned below:-

1) Hire charges upto 100 kms.

2) Hire charges from 100 to 300 kms.

3) Hire charges from 300 and above

4) Hire charges from Rail Head

M/s Zinc Foods Private Limited raised Bill of supply to The Regional Manager, Tamilnadu Civil Supplies Corporation, Dharmapuri mentioning transport charges under SAC 996511 periodically and received bill amount, from the said service recipient.

It is to be stated that in none of the above mentioned Bill of supply GST has been charged. M/s Zinc Foods (P) Ltd., have *mentioned in the invoice a protective clause that any other applicable taxes and duties if any, as demanded by the appropriate authorities shall be charged. It is further informed that both P.Baskar, and Sri Jaisakthi Transport have not issued consignment note, and therefore not covered under the definition of GTA. Under service code and Tariff Heading 9965 or 9967, services provided by a GTA by way of transport of goods in a goods carrier to any registered entity is taxable under RCM. The recipient is liable to pay tax under RCM, and can avail ITC. The GTA has also option to collect and pay tax @ 12% (6% + 6%) under forward charge, and claim ITC.*

6. Reliance was also placed by the learned counsel for the petitioner on various decisions including *AAAR Maharashtra, reported in (2020) 120 taxmann.com.9* and the *AAR Karnataka – reported in (2020) 113 taxmann.com 288*. The relevant portions are extracted hereunder:

On further appeal the AAAR Maharashtra - (reported in (2020) 120 taxmann.com.9) have held as follow:-

The Appellant is simply hiring out their transport vehicles to M/s POSCO ISDC Pvt. Ltd., for consideration. AAAR, therefore, held that the services provided by the applicant would be classified under the Heading 9966 of Notification No.11/2017-CT (Rate), dated 28.06.2017, bearing the description "rental services of transport vehicles". Thus, AAAR upheld the order of AAR that the services rendered by the Applicant to M/s POSCO ISDC Pvt. Ltd. as a sub-contractor would not be classified as GTA service.

3) The AAR - Karnataka (2019) reported in (2020) 113 taxmann.com.288 - It is held that,

The services provided as a GTA are different from the services provided by way of giving vehicles on hire basis to another GTA and hence are independent of each other so far as tax treatment is concerned. Further there is no provision in the law barring person being a GTA from renting the vehicle to another GTA. Therefore, AAR held that registered person can be a Goods Transport Agency and also a supplier of goods vehicles to another GTA on hire basis at the same time subject to the appropriate tax treatments as notified in Notification No.11/2017-Central Tax (Rate) dated 28.062017- Central Tax (Rate) dated 28.06.2017.

6.1.On the strength of the above, it was submitted that the petitioner is not liable to pay tax on hire or renting charges received for goods vehicle given on hire / lease /rent to registered GTA in the State of Tamil Nadu. However, the impugned order, while dealing with the above objection, merely rejecting the reply and confirming the proposal. The order under the head “findings” once again reiterates the very same proposal and does not deal with any of the objections raised by the petitioner including the claim by the petitioner that hiring / renting to GTAs is entitled to exemption in terms of Notification No.12/2017. It was thus submitted that the impugned order suffers from gross non-application of mind and thus stands vitiated.

7. Insofar as the second issue is concerned, it is submitted by the learned counsel for the petitioner that they had taken on lease motor vehicles, which was thereafter used for GTA services rented by the petitioner. However, the same was sought to be subjected to tax in the Show Cause Notice by stating that lorry freight expenses and transport income incurred represent taxable supplies. The relevant portion of the Show Cause Notice is extracted hereunder:

3.4.Lorry Freight Expense, Transport Income and sale of Fixed Assets:

It is noticed that the tax payer has incurred Lorry freight under the expenses schedule of profit, loss account statement for the year 2022-23 which has been discussed as below:

a)Lorry Freight and Transport Income:

Tax Period	*Description*	*Schedule under which declared*	*Amount incurred / income in Rs.*	*Tax Rate*	*Tax liability (SGST & CGST) in Rs.*
2022-23	*Transport Income*	*Income*	*28,46,520*	*5%*	*142326*

8. The petitioner submitted its reply dated 03.07.2024 in response to the above proposal, *inter alia* highlighting that the taxable value of supplies which are proposed in the Show Cause Notice includes transport income.

Insofar as Transport Income of Rs.28,46,520/-, it is submitted that the same represents lorry hire charges received from M/s.Zinc Foods (P) Ltd., which the petitioner submits is eligible for exemption in terms of Notification No.12/2017. The relevant portion is extracted hereunder:

> *"............*
> *With regard to this defect, it is stated that a sum of Rs.2846520/- is related to income gained from lorry hire transactions out of payment received to the tune of Rs.651949511/- received from M/s Zinc Foods (P) Ltd., and paid a sum of Rs.649102993/- to Tvl.Sri Jaisakthi Transport towards hire charges towards supply of goods vehicles on hire basis*
>
> *The nature of transaction is elaborately explained in respect of defect No.3(i) supra, and the same may be considered. When the lorry hire charges received from GTA is exempt under Heading 9966/9973, income of Rs.2846520/- earned out of such exempted transactions is not liable to GST as well. The same is credited under income liable to I.T. in the financial statement. It is not a taxable value under CGST/TNGST Act 2017. Hence, GST is not leviable on lorry hire charges income."*

8.1. However, the impugned order proceeds to confirm the proposal by stating that the petitioner had not submitted any relevant documents and hence the tax payer's reply is not accepted. The relevant portion is extracted hereunder:

__Findings:__

For the defect the taxpayer not submitted any relevant documents, hence the taxpayer reply is not accepted. Hence the taxpayer is intimate to pay tax penalty along with interest.

Tax		*Interest*		*Penalty*	
CGST	SGST	CGST	SGST	CGST	SGST
71163	71163	17617	17617	71163	71163

9. It is submitted by the learned counsel for the petitioner that the impugned order does not assign any reason for rejecting the reply filed. It is submitted that there is non-application of mind to the reply, as evident from the fact that none of the issues raised in the reply in respect of the above two issues have even be dealt with by the respondent authority.

10. To the contrary the learned counsel for the respondent would submit that this is an appelable order and therefore, the writ petition ought not to be entertained under Article 226 of the Constitution of India.

11. Having considered the submissions on either side, while this Court is conscious of the fact that writ petitions under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is not availed, however, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

12. On perusal of the impugned order of assessment, this Court is of the view that there is merit in the submission of the learned counsel for the petitioner that the impugned order suffers from non-application of mind inasmuch it merely reiterates the proposal and does not deal with any of the aspects set out in the reply in respect of the above two issues.

13. In view thereof, the impugned order dated 03.09.2024 is set aside. The petitioner, in addition to the reply already filed, may submit its objections within a period of two weeks from the date of receipt of a copy of this order. If any representation / reply is filed within the stipulated period as stated supra, the same shall be considered by the respondent and orders shall be passed in accordance with law, after affording the petitioner a reasonable opportunity of hearing. However, if no representation / reply is filed within the stipulated period i.e., two weeks from the date of receipt of a copy of this order, the impugned order shall stands restored.

14. Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.11.2024

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

MOHAMMED SHAFFIQ, J.

shk

To:

Deputy State Tax Officer (Intelligence),
Adjudication & Legal Wing, Hosur,
3/47, Sapthagiri Complex,
Thorapalli Agraharam Village,
Adjacent to Ashok Leyland Unit-II,
Gandhi Nagar, Hosur Tk.,
Krishnagiri Dt., Tamil Nadu 635 109.

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