# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 27.11.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.36062 of 2024**
**and**
**W.M.P.Nos.38960 and 38959 of 2024**

Latta Super Market,
Represented by its Partner,
Paulraj Dhinakaran,
No.6, 6, Dhandeeswaran Main Road,
Chennai 600 042. ... Petitioner

Vs.

State Tax Officer,
Velachery Assessment Circle,
2nd Floor, Room No.234, The Integrated
Building for Commercial Taxes & Registration
Department, (South Tower), Nandanam,
Chennai 600 035. ... Respondent

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the files of the respondent herein in his GSTIN:33AABFL6568K1Z1 /2019-20 dated 30.08.2024 to quash the same with the direction to conduct and record cross examination along with their objections dated 19.08.2024.

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|---|---|
| For Petitioner | : Mr.R.Kumar |
| For respondent | : Mr.T.N.C.Kaushik, Additional Government Pleader. |

**ORDER**

The present writ petition is filed challenging the impugned order dated 30.08.2024 passed by the respondent relating to the assessment year 2019-20.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the retail business of tricycles, scooters, pedal cars, similar wheeled toys, soaps, cooker and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2019-20, the petitioner filed its return and paid the appropriate taxes. However, as per the authorization issued by the Joint Commissioner (ST), Chennai South Division, an audit was conducted at the petitioner's place of business by the Assistant Commissioner. On verification of the petitioner's books of account, the following discrepancies were noticed viz., *inter alia* including the excess claim of ITC and under declaration of ineligible ITC in terms of Section 17(5) of the SGST Act.

3. It is submitted by the learned counsel for the petitioner that an intimation in Form GST DRC-01 was issued on 31.05.2024, followed by reminders on 01.07.2024, 16.07.2024 and 05.08.2024. Further, personal hearing was offered on 30.07.2024. The petitioner had filed its reply to the Show Cause

Notice on 19.08.2024. It is submitted that there were no other issues and the same were not being adjudicated. The petitioner, in response to the excess claim of ITC which is only in view of the alleged mismatch between GSTR-2A and GSTR-3B, had along with its reply filed a declaration from supplier, which was also furnished to the respondent authority. The respondent authority had thereafter apparently conducted an enquiry with the alleged supplier of the petitioner who had disowned the issuance of such a certificate.

4. It is the submission of the learned counsel for the petitioner that they were not put on notice on this aspect. It is the case of the petitioner that if the declaration form were to be rejected on the basis of any enquiry, the same ought to have been informed to the petitioner to enable them to meet the case, and if needed, they could have requested an opportunity for cross-examination. However, the impugned order has been passed without the petitioner being informed of the above aspect. In that view of the matter, it is submitted by the learned counsel for the petitioner that the impugned order is made in gross violation of principles of natural justice.

5. Insofar as the ineligible ITC is concerned, it is submitted by the learned counsel for the petitioner that they had filed their reply. However, the impugned

order proceeds on the basis that no reply has been filed as would be evident from the following portion of the impugned order:

Reply filed by the taxable person has been considered very carefully.

Excess Claim of ITC : GSTR-2A Vs GSTR-3B
CGST of Rs.31,91,094/- and SGST of Rs.31,91,094/-

In the reply the taxable person stated that they have claimed the input tax credit only on the basis of the tax invoice and the payments were made through NEFT. They had also stated that they have enclosed the copies of the declaration filed by their suppliers as per Circular No. 183/15/2022-GST dated 27.12.2022. The declarations are the tax invoices have not been uploaded in the GST Common Portal. The declaration have been filed manually and the details of the declarations filed are as follows:

| Sl. No. | GSTIN | Name of the taxable person | Date of declaration | Taxable Value | CGST | SGST |
|---|---|---|---|---|---|---|
| 1 | [illegible] | [illegible] | [illegible].2024 | [illegible] | [illegible] | [illegible] |
| 2 | [illegible] | Shree Sai Enterprises | [illegible] | 5225.71 | [illegible] | [illegible] |
| 3 | [illegible]Y7778F1ZH | Sri [illegible] enterprises | [illegible].2024 | [illegible] | [illegible] | [illegible] |
| 4 | [illegible] | Sri [illegible] | [illegible] | 1,[illegible]875.36 | [illegible] | 7560.08 |
| 5 | [illegible] | Om [illegible] Enterprise | [illegible] | 10185.20 | 888.24 | 888.24 |
| 6 | [illegible] | [illegible] | [illegible] | 574.58 | 87.71 | [illegible] |
| 7 | [illegible] | Sri [illegible] Agencies | [illegible] | [illegible] | [illegible] | [illegible] |
| 8 | [illegible] | [illegible] Agencies | 18.07.2024 | [illegible] | [illegible] | [illegible] |
| 9 | [illegible] | [illegible] | 18.07.2024 | 10[illegible] | [illegible] | [illegible] |
| 10 | [illegible] | [illegible] Agencies | 18.07.2024 | 151895.50 | [illegible] | [illegible] |
| 11 | [illegible] | Mahalaxmi Impex | 18.07.2024 | 280988.00 | [illegible] | 13858.[illegible] |
| 12 | [illegible] | [illegible] | 18.07.2024 | 39565.25 | [illegible] | [illegible] |
| 13 | [illegible] | [illegible] Enterprises | 18.07.2024 | 22484.[illegible] | [illegible] | [illegible] |
| 14 | [illegible] | Shree Sai Traders | 18.07.2024 | [illegible] | [illegible] | [illegible] |
| 15 | [illegible] | [illegible] | [illegible] | 75751.0[illegible] | 1156.52 | [illegible] |
| 16 | [illegible] | CVR Marketing | 18.07.2024 | 1865.66 | [illegible] | 46.63 |
| 17 | [illegible] | 33ANCPK[illegible] | 18.07.2024 | [illegible] | [illegible] | [illegible] |
| 18 | KSS Agency | [illegible] | 18.07.2024 | 364576.75 | [illegible] | [illegible] |

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| | | | | | | |
|---|---|---|---|---|---|---|
| 18 | BENANI Foods Private Limited | 33AAFCB7460F1ZV | 20.07.2024 | 72142.14 | 1803.50 | 1803.50 |
| 19 | Parameswaran | 33AAEPP6783F1Z4 | 18.07.2024 | 23264.44 | 1303.05 | 1303.05 |
| 20 | Jeevan Traders | 33ARIPC9741L1ZP | 18.07.2024 | 2800 | 70 | 70 |
| 22 | Chennai Impex | 33AAOFC8834A1ZP | 18.07.2024 | 15730 | 1100.40 | 1100.40 |
| 23 | Harish Enterprises | 33AOBPK4064P1ZR | 18.07.2024 | 21520.70 | 995.03 | 995.03 |
| 24 | MSV Enterprise | 33AOPPS2905D1Z0 | 18.07.2024 | 1545.16 | 38.63 | 38.63 |
| 25 | Bharath Traders | 33AAFFJ8778E1ZL | 20.07.2024 | 3330.00 | 299.70 | 299.70 |
| 26 | M Palani Agency | 33AVTPM3209K1ZA | 18.07.2024 | 107696.45 | 6268.23 | 6268.23 |
| 27 | MSV Agencies | 33AXPPA6716K1ZC | 18.07.2024 | 1218.95 | 118.53 | 118.53 |
| 28 | H&H Associates | 33AAIFH0770J1Z0 | 18.07.2024 | 85440.18 | 4649.00 | 4649.00 |
| 29 | Mathanitha Consultancy Service | 33ARYP8906H1ZH | 18.07.2024 | 12339.28 | 308.48 | 308.48 |
| 30 | Sri Venkateswara Agencies | 33ACCPL0675J1ZP | 18.07.2024 | 18084.15 | 1012.51 | 1012.51 |
| 31 | HN Essential Oils & Products | 33AWHPS6009N1ZY | 18.07.2024 | 1111.61 | 66.70 | 66.70 |
| 32 | S M Agencies | 33MRDPS338A1Z9 | 18.07.2024 | 1930.68 | 173.76 | 173.76 |
| 33 | Murugan Enterprises | 33AAAFM9613M1Z5 | 18.07.2024 | 33883.08 | 2959.42 | 2959.42 |
| | | | Total | 3450828 | 120114.8 | 120114.8 |

The taxable person has filed only 33 declarations for a turnover of Rs.34,50,828/- on which CGST is Rs.1,20,114.80 and SGST of Rs. 1,20,114.80. Further on verification of the declaration filed, the taxable person had not filed the copies of the tax invoices and on enquiry with the taxable supplier who had issued the declaration, without signing the Annexure to the declaration informed that the certificate / declaration was not issued by them and the signature in the letter or declaration does not related to them. Further the annexure annexed to all the declaration has in which the invoices wise details has been furnished does not either bear the signature and if bears the signature, on verification it has been informed by the taxable supplier who had issued the declaration informed that they have not issued the declaration and the signature in the declaration does not relates to them.

6. In light of the above, it is submitted by the learned counsel for the petitioner that the impugned order suffers from vice of non-application of mind to the material of record and also in violation of principles of natural justice as the reasons which weighed in the mind of the assessing authority while passing the order of adjudication have not been disclosed.

7. When the above defects in the order of assessment were pointed out, the learned counsel for the respondent would submit that they would redo the assessment after providing a reasonable opportunity of hearing.

8. In view thereof, the impugned order dated 30.08.2024 is set aside. The petitioner is granted liberty to treat the impugned order as a Show Cause Notice. The petitioner is directed to file its objection within a period of two weeks from the date of receipt of a copy of this order. The respondent shall thereafter redo the assessment after granting the petitioner a reasonable opportunity of hearing in accordance with law.

9. 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
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To:

State Tax Officer,
Velachery Assessment Circle,
2nd Floor, Room No.234, The Integrated
Building for Commercial Taxes & Registration
Department, (South Tower), Nandanam,
Chennai 600 035.

**MOHAMMED SHAFFIQ, J.**

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