IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37113 of 2024
and
W.M.P.Nos.40111, 40113 and 40115 of 2024

Tvl. Scintel Technologies Private Limited,
Having Office at Workafella Business Centre,
No.37, Office No. LG-012, TTK Road,
CIT Colony, Alwarpet,
Chennai, Tamil Nadu -600 018,
Represented by its Authorised Representative
Krishnamani Chalam ..Petitioner

Vs.

1.The State Tax Officer,
Kelambakkam Assessment Circle,
No.46, First Floor,
Greenways Road,
Chennai- 600 035.

2.Assistant Commissioner (ST),
Chrompet Assessment Circle,
Integrated Commercial Tax Building (South Tower),
Room No.336, 3rd Floor, Block Number 19,
T.S.No.2, Government Farm Village,
Nandanam, Chennai -600 035. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records relating to the impugned order made dated 29.08.2024 along with summary thereof in FORM GST DRC 07 with reference number ZD3308242721686 issued by the first respondent, and quash the same to the extent it confirms the demand in respect of defect No.2 (Input mismatch in GSTR 3B & 2A), Defect No.6 (Employee Benefit Expenses), Defect No.7 (Other Expenses), Defect No.11 (Disposal of tangible assets), Defect No.12 (Reversal of ITC on sale of furniture and computers), Defect No.14 (Ineligible or blocked credit), and Defect No.16 (Loss on sale of assets) and pass orders

For Petitioner	: Mr.Karthik Sundaram
For Respondents	: Mr.C.Harsha Raj Additional Government Pleader

ORDER

The present writ petition is filed challenging the order dated 29.08.2024 on the premise that the impugned order is non speaking and also suffers from error apparent on the face of the record.

2. The petitioner is engaged in the business of providing services in the software sector and is registered under the GST Act. During the relevant period, 2019-20, the petitioner had filed its return and paid appropriate taxes. While so, there was an audit under Section 65 of the Act of the petitioner's place of business. During the course of audit, 16 defects were noticed, out of which, 11 were dropped

after considering the reply, while 7 defects have been confirmed. The defects which have been confirmed is set out in the table below:

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In view of the above facts the taxpayer's tax is determined u/s 73 of the TNGST Act year 2019-20 as detailed below:

S.No	Particulars	CGST	SGST	IGST	Total
1	Defect 2. Input Mismatch (GSTR-3B vs GSTR-2A)	23,[illegible]	23,027/-	5,911/-	51,95[illegible]/-
2	Defect 8: Employee Benefit Funds (Staff Welfare Expenses)	84,346/	84,346/-	0	1,68,692/-
3	Defect 9: Other Expenses (Repairs & Maintenance)	31,479/-	31,479/	0	62,958/
4	Defect 12: Disposal of tangible Assets	20,63,513/-	20,63,538/-	0	41,27,051/-
5	Defect 12: Reversal of ITC on sale of Furniture, Computer	2,69,995/	2,69,995/-	0	5,39,990/-
6	Defect No.14: Ineligible/Blocked Credit	7,67,720/	6,57,720/	62,09,543/-	74,25,[illegible]/
7	Defect No.16: Loss on sale of Assets	6,73,429/-	6,73,429/	0	13,46,858/
	Tax proposed	37,27,523/-	37,27,524/-	68,15,463/-	1,37,70,540/-
	Add: Interest @ 18%	29,26,463/	29,26,464/	43,55,708/-	1,06,[illegible]/
	Add: Penalty @ 10%	3,72,753/-	3,72,752/-	6,81,549/-	13,[illegible]/-
	Total Due	70,26,738/	70,26,740/-	1,19,06,310/-	2,59,58,788/-
	Less: Tax paid	0	0	0	0
	Balance	70,26,738/	70,26,740/-	1,19,06,310/-	2,59,58,788/-

Notice DRC-07 is issued through electronically

GUNASEKARAN Digitally [illegible]

Kelambakkam AS[illegible]

3. It is submitted by the learned counsel for the petitioner that in respect of all these defects, detailed reply was filed, however the respondent authority has rejected the same by merely stating that the reply of tax payer is found to be not satisfactory and levy of taxes confirmed. There is no reasons that have been assigned as to why the reply which has been filed by the petitioner is rejected.

4. Illustratively, the petitioner would make a reference to defect No.14, what was proposed to be disallowed/rejected as ineligible credit was only Rs.5,67,720/- under the CGST and SGST Act respectively in respect of taxable value of supply to the extent of Rs.63,09,580/-. However, while passing the order, the authority has treated the taxable value of supply as ineligible credit under the IGST Act. This would be evident from the above extracted table.

5. It is submitted that this would illustrate the gross non application of mind on the part of the assessing authority. It was also submitted by the learned counsel for the petitioner that the respondent authority has only recorded the fact that the replies have been filed, which runs to about 17 pages and with reference to the 6 issues, which runs close to 10 pages. However, all the 6 defects have been confirmed by merely stating that "reply by tax payer is found to be not satisfactory

and tax levy is confirmed".

6. This being pointed out to learned Additional Government Pleader for the respondents, he would submit that they would consider and pass orders afresh.

7. Recording the same, the impugned order dated 29.08.2024 is set aside. It is open to the respondents to proceed, in accordance with law, after affording the petitioner a reasonable opportunity of hearing.

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

11.12.2024

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

To
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MOHAMMED SHAFFIQ, J.

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