BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.3649 of 2024
and
W.M.P.(MD) Nos.3584 and 3585 of 2024

Tvl.Rajalakshmi Agencies,
rep. by its Proprietorship
R.Jeeva ... Petitioner

/vs./

The State Tax Officer (FAC),
Aruppukottai Circle,
Virudhunagar District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide GSTIN. 33AGXPJ7977L1ZB/2017-18 dated 28.12.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2017-18.

For Petitioner : Mr.Raja.Karthikeyan
For Respondent : Mr.J.K.Jayaselan
Government Advocate

ORDER

The petitioner is before this Court against the impugned order dated 28.12.2023 passed by the respondent for the assessment year 2017-18, bearing reference in GSTIN:33AGXPJ7977L1ZB/2017-18.

2.The impugned order has been passed under Section 74 of the TNGST Act, 2017. The impugned order precedes an intimation in Form GST ASMT 10 dated 25.11.2022, GST 01A dated 31.01.2023 and notice in Form GST DRC 01 dated 11.04.2023.

3.The petitioner has also replied to each of the notice, which has later culminated in the impugned order. The dispute in the impugned order arises out of the mismatch between the Return filed by the petitioner in GSTR 3B and the auto populated information relating to the input tax credit in its Form GSTR 2A. The mismatch of the input tax credit availed by the petitioner in GSTR 3B and the auto populated input tax in GSTR 2A are as under:

	CGST	***SGST***
ITC Claimed in GSTR -3B	*1,14,80,757.10*	*1,14,80,757.10*
ITC auto populated in GSTR -2A	*88,767,600.42*	*88,767,600.42*
Difference	*26,03,156.68*	*26,03,156.68*

4.The reply of the petitioner regarding the mismatch is as under:

	CGST	***SGST***
ITC as per GSTR -3B	*11526632.10*	*11526632.10*
Less: Reversed ITC as 3B	*45875.00*	*45875.00*
	11480757.10	*11480757.10*

5.The learned counsel for the petitioner submits that the petitioner is a dealer of Cement supplied by Tamil Nadu Cement Corporation (TNCC) Limited and from RAMCO Limited.

6.The learned counsel for the petitioner submits that the respondent has accepted the difference between the input tax credit availed by the petitioner in GSTR 3B and the shortage in GSTR 2A *qua* the supplies made by the Tamil Nadu Cement Corporation, vide the impugned order and that the balance of Rs. 12,09,347.38/- towards CGST and Rs.12,09,347.38/- towards SGST alone has been denied, which is less than 20% of the difference between the credit that was availed in GSTR 3B and the auto populated returns in GSTR 2A. In this connection, a reference is made to the following paragraph from the impugned order:

> *“The tax payer has filed his addition reply on 15.05.2023. The reply filed by the tax payer were considered carefully. The tax payer ITC claimed (CGBT Rs. 13,93,809.30 SGST Rs.13,93,809.30) in Jul-2017. But the tax payer's supplier Tvl.Tamil Nadu Cement Corporation Limited GSTR-1 filed on Sep-2018 (Attached Certificate). The tax payer reply partly accepted, partly not accepted details as below:*

	CGST	***SGST***
Excess claim of ITC	*26,03,156.68*	*26,03,156.68*
Tvl Tamil Nadu Cement Corporation Limited GSTR-1 filed on Sep-2018	*13,93,809.30*	*13,93,809.30*
Balance	*12,09,347.38*	*12,09,347.38*

7.It is submitted that as far as the procurement from TNCC Limited is concerned, the petitioner has obtained the necessary certificate from TNCC to show that there is no discrepancy between the credit, that was availed by the petitioner from TNCC Limited in its Form GSTR 3B and GSTR 2A.

8.It is submitted that as far as the procurement from RAMCO Limited is concerned, the petitioner also has the records to substantiate that there is no discrepancy. However, the RAMCO Limited has not given a certificate to that effect.

9.It is submitted that Rule 36 of CGST Rule, 2017, which is pari materia to Rule 36 of TNGST Rule, 2017, allowed the variation up to 20% initially during the period immediately after the implementation of GST Act, 2017 vide Notification No.49/2019-Central Tax dated 09.10.2019, whereby, the variation up to 10% was allowed. It stood amended by the Notification No.40/21-Central Tax dated 29.12.2021 with effect from 01.01.2022.

10.Hence, the provision as it stood before 01.01.2022 and after 01.01.2022 reads as under:

BEFORE	AFTER
(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed ***5 per cent****, of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.* *Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above:* *Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above."*	*(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-* *(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and* *(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.*

11.The learned counsel for the petitioner has drawn attention to the Notification No.49/2019-Central Tax dated 09.10.2019 issued in the exercise of powers conferred under Section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017) amending the Rules. In this connection, a reference is made to para 3 of the said Circular, which reads as under:

> *"3.In the said rules, in rule 36, after sub-rule (3), the following sub-rule shall be inserted, namely-*
>
> > *"(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37""*

12.It is submitted that the difference between the total credit availed and the credit that is sought to be denied is less than 20% and therefore, the impugned order passed is arbitrary and is liable to be interfered with.

13.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

14.The provisions of the CGST Rules, 2017, has undergone series of changes from its inception. Rule 36(4) particularly has undergone changes as mentioned above.

15.This aspect ought to have been considered by the respondent while passing the impugned order. P*rima facie*, the difference that is attributable between the GSTR 2A and GSTR 3B is on account of mismatch for the supplies made by RAMCO. It is 10.53% of total credit, which is less than 20% as per the amended provisions of Rule 36(4) as it stood till 09.10.2019 vide Notification No. 49/2019-Central Tax.

16.Since aspect has not been considered by the respondent, the impugned order is set aside and the case is remitted back to the respondent to pass fresh orders in the light of the provisions as it stood amended by Notification No. 49/2019-Central Tax dated 09.10.2019.

17.All the recovery proceedings are therefore directed to be kept in abeyance pending orders in the remand proceedings. The respondent shall pass fresh orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Needless to state that the petitioner shall also be heard.

18.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
apd/mm

15.07.2024

To

The State Tax Officer (FAC),
Aruppukottai Circle,
Virudhunagar District.

C.SARAVANAN, J.

apd/mm

W.P.(MD) No.3649 of 2024

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