BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8566 of 2024
&
W.M.P.Nos.7800 and 7804 of 2024

Tvl.Sri Rahaventher Industries
Rep by its Proprietor S.Varatharaju
2/862, AR Nagar Extention,
Kadchanendal
Kadakinaru, Madurai-625 107 ... Petitioner

Vs.

1. Union of India
Rep by Secretary,
Department of Revenue,
Ministry of Finance,
No.137, North Block,
New Delhi-110 001

2 The Goods and Service Tax Council,
Rep by its Chairman,
Goods and Service Tax Council,
Secretariat, 5th Floor,
Tower II, Jeevan Bharti Building, Janpath
Road, Connaught Palace
New Delhi-110001

3 The State of Tamil Nadu
Rep by its Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Fort St George, Chennai- 600 009

4 Principal Secretary/commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai-600 005

5 The State Tax Officer
Madurai Rural (East) Circle,
Madurai-20 ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the 1st respondent in Notification No. 09/2023 - Central Tax dated 31-03-2023 and the records on the file of the 3rd respondent in G.O.Ms.No.41 and the Notification dated 05-04-2023 issued therein and the records on the files of the 5th respondent in GSTIN 33ACRPV5123A1ZQ dated 30.12.2023 and quash the same as manifestly arbitrary void contrary to the provision of Section 168A of the Goods and Services Tax Act 2017 and violative of Articles 14 and 19(1)(g) of the Constitution of India and illegal without jurisdiction and against the Principles of Natural Justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.M.Ashok Kumar,
Central Governmemt Senior Standing Counsel for R1 and 2

Mr.R.Suresh Kumar, AGP for R3 to 5

ORDER

The petitioner has challenged the impugned order dated 30.12.2023 bearing Ref. No.ZD33122382708B passed for the assessment year for the tax period between July 2017 to March 2018 being the first year after the implementation of the demand.

2. It is the specific case of the petitioner that petitioner had replied to the show cause notice dated 04.08.2023 and to notice in DRC-01 dated 16.09.2023 on 01.11.2023. However, the respondents have proceeded to pass the impugned order The operative portion of the impugned order reads as under:

> *" Tax period (JULY 2017-MARCH 2018) Financial Year - 2017- 2018*
>
> *Sir,*
>
> *Tvl. SRI RAHAVENTHER INDUSTRIES, doing business at 2/862, AR NAGAR EXTENTION, KADACHANENDAL, KADAKINARU, Madurai, Tamil Nadu, 625107 is a registered person under TNGST Act, 2017, under the Jurisdiction of this office. On scrutiny of the returns for the year 2017-2018 reveals that there was mismatch in GSTR3B vs GSTR2B/2A are noted below:*
>
> *Mismatch in availing of Input and GSTR-3B-return and GSTR-2B/2A:*
>
> On verification of Input Tax Credit availed in Form GSTR-3B returns with Form GSTR-2B/2A for

the assessment year 2017-2018, it was noticed that you have availed/claimed excess Input Tax Credit to an extent of Rs.393611-(CGST),Rs.393611/- (SGST) and Rs.601204/- (IGST) thereby reduced the output tax payment as detailed below:

Tax period	*ITC claimed in GSTR-3B during the month [as per table 4A(4)=4A(5)-4B(1)-4B(2)]**				*ITC auto-drafter in GSTR-2A during the month [asper PART-A, PART-B] (Excluding RM Supplies*			
	IGST	*CGST*	*SGST/UTGST*	*CESS*	*IGST*	*CGST*	*SGST/UTGST*	*CESS*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
		Deliberately left blank						

Details	*CGST ITC (Rs.)*	*SGST ITC (Rs.)*	*IGST ITC (Rs.)*
	Deliberately left blank		

The same reference was informed to you through as per the reference cited. On receipt of the ASMT-10 notice, You have neither filed any objections nor have paid the tax due along with the corresponding Interest amount. Hence it is construed that, you have no objection to the above proposal. Therefore Demand and Recovery action has been initiated u/s 73(1) of the TNGST Act / CGST Act 2017 as below:

Defect	2017-2018	Tax due(R)			Interest due (Rs) upto 30.12.2023			Penalty due (Rs)		
		IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
		Deliberately left blank								

It is further submitted that the demand has been confirmed during the statutory period of limitation U/s. 73(9) and 10 of the TNGST Act, 2017 and therefore is liable to be quashed."

3. Opposing the prayer,learned counsel for the respondents would submit that the challenge to the impugned order in this Writ Petition is without any merits. It is further submitted that Writ Petition is beyond the period of limitation and therefore in the light of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited***, reported in ***2020 SCC OnLine SC 440.***. He submits that the petitioner has not replied and therefore the impugned order is not liable to be quashed.

4. Considered the submissions of the learned counsel for the petitioner and the respondents. It is noticed that the impugned order is not a speaking order. It has also not considered the reply filed by the

petitioner on 01.11.2023 which has been referred to in Item No.3 in the reference column to the impugned order.

5. As the impugned order is without proper reasoning, it is liable to be set aside and remitted back to the respondents to pass a fresh order on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Writ Petition is disposed of with the above observation. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

15.04.2024.

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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C.SARAVANAN, J.

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