BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2024**

CORAM:

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

W.P.(MD) No.8457 of 2024
and
W.M.P.(MD) No.7657 of 2024

Tvl.Ganimozhi Stores,
represented by its Proprietorship K.Kannayiram,
S/o.Koori,
No.9/270/-, Keelapallivasal Street,
Paramakudi,
Ramanathapuram 623 707. ... Petitioner

/vs./

The Superintendent of GST and Central Excise,
O/o. the Assistant Commissioner of GST & Central Excise,
Madurai II Division,
Madurai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the impugned assessment order on the file of respondent vide GSTIN:33ABRPK0864G1ZL/2017-18 and 2019-20 dated 30.11.2023 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja.Karthikeyan

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The petitioner is aggrieved by the impugned assessment order dated 30.11.2023 bearing Ref.C.No.IV/09/69/2022-GST/ADJN (DIN: 20231259X0000000D291) passed for the assessment year 2017-2018.

2.By the impugned order, the respondent has confirmed the following amounts:-

"i) I confirm the demand of Rs.7,16,990/-(Rupees Seven Lakhs Sixteen Thousand Nine Hundred and Ninety only) (CGST of Rs. 3,58,495/- and SGST of Rs. 3,58,495/-) being the short payment of tax by them during the period 2017-18, under Section 73(9) read with Section 73(1) of the CGST Act/ TNGST Act, 2017;

(ii) I confirm the demand of Rs.61,572/- (Rupees Sixty One Thousand Five Hundred and Seventy Two only) (CGST-Rs. 30,786/-, SGST-Rs. 30,786/-) being the excess availed ineligible Input Tax Credit by them during the period 2017-18 and 2019-20, under Section 73(9) read with Section 73(1) and Section 16(2) of the CGST Act, 2017/TNGST Act, 2017;

(iii) I confirm the demand of interest under Section 50(3) of the CGST Act,2017/ TNGST Act, 2017 on the amount as determined above at Sl.No.14(i) and (if) above;

iv) I appropriate the payment of inrest of Rs. 7,16,990/-(CGST of Rs.3,58,495/- and SGST of Rs. 3,58,495/-) as per the DRC-03 vide DRC03 D13306220008979 dated 04.06.2022 as determined in Sl.No. 14(i) above;

(v) I appropriate the payment of Interest of Rs. 1,27,748/- (CGST Interest of Rs. 63874/- and SGST Interest of Rs.63,874/-) by them vide DRC 03 DC33122220375611 dated 27-12-2022, DC33122220375755 dated 27-12-2022 and DC33122220375865 dated 27-12-2022 towards the amount confirmed in SI.No. 14(i) above;

(vi) I impose a penalty amount of Rs. 7,16,990/-(CGST Penalty of Rs.3,58,495/- and SGST Penalty of Rs. 3,58,495/-), on the taxpayer under Section 122(1)(iii) read with Section 73 (9) of the CGST Act, 2017/TNGST Act, 2017 for the short payment of GST determined and confirmed as shown in Sl.No.14(i) above;

(vii) I impose a penalty amount of Rs.Rs. 71,700/-(CGST Penalty of Rs.35,850/- and SGST Penalty of Rs. 35,850/-) for the short payment of GST onthetaxpayerunder Section 122 (2)(a) of the CGST Act, 2017/TNGST Act, 2017 as shown in Sl.No. 14 (i) above;

(viii) I impose a penalty of Rs. 61,572/-(Rupees Sixty One Thousand Five Hundred and Seventy Two only) (CGST-Penalty Rs. 30,786/-, SGST-Penalty Rs. 30,786/-) under Section 122(1)(vii) read with Section73(9) of the CGST Act, 2017 on the amount as determined above at Sl.No.14(ii) above;

(ix) I impose a penalty of Rs. 20,000/- (CGST Penalty: Rs. 10000/-+SGST Penalty: Rs.10000/-) under Section 122 (2)(a) of the CGST Act, 2017 and corresponding TNGST Act, 2017 on the amount as determined above at Sl.No.14 (ii) above;

(x) I confirm the demand of Late Fee of Rs. 79,000/-(CGST Late Fee Rs.39500/- +SGST Late Fee Rs. 39000/-) under Section 47(2) of the CGST Act, 2017/TNGST Act, 2017."

3.It is the specific case of the petitioner that the demand confirmed as far as mismatch is concerned, there is no basis to confirm the same based on the amendment brought to the Rules with introduction of GSTR 2A with effect from 01.01.2022 amending Section 16 of the respective GST enactment. It is therefore submitted that the demand is without the authority of law and therefore, the impugned order seeking to demand the differential input tax of Rs.61,572/- is liable to be interfered with.

4.As far as the balance amount is concerned, it is submitted that the disputed tax on account of failure to pay tax in time has been paid and appropriated. However, the respondent has wrongly imposed penalty to the tax under Section 122(1)(iii) r/w section 73(9) of the CGST Act, 2017. Hence, the impugned order calls for interference under Article 226 of the Constitution of India.

5.The learned counsel for the petitioner has drew attention to Sections 61(3) and 73(8) of the respective GST enactment, which reads as under:-

61.Scrutiny of returns	***73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful- misstatement or suppression of facts:-***
i) .... *ii) ....* *iii) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or Section 74.*	*i) ....* *ii) ....* *iii) ....* *iv) ....* *v) ....* *vi)..........* *vii) ....* *viii) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.*

6.The learned counsel for the respondent on the other hand would submit that the writ petition is devoid of merits and is liable to be dismissed. It is submitted that the petitioner, in any event, has an alternate remedy before the

Appellate Commissioner under Section 107 of the CGST Act, 2017. That apart, it is submitted that the discrepancies were noticed by the respondent insofar as mismatch in the invoices, based on which the input tax credit was availed. A specific reference was made to the table in para 12.3 of the impugned order.

7.The learned counsel for the respondent would submit that the input tax credit based on the wrong GSTIN was wrongly availed and therefore, it has been rightly denied. It is further submitted that correct GSTIN of the petitioner is 33ABRPK0864 GIZL and not GSTIN Nos.33AOYPM4895FIZ8 and 33AOYPM4895FIZ8 in the invoice raised by M/S.Vinvent Chemilab Private Limited or M/s.Balaji Industries or M/S.Moorthy Industries and therefore, the credit has been correctly denied. In any event, it is submitted that the issue can be agitated before the Appellate Commissioner.

8.The learned counsel for the respondent would further submit that since the petitioner had collected tax, but had failed to remit the tax in time, interest and penalty have been imposed and therefore, the impugned order does not call for any interference.

9.The learned counsel for the respondent would further submit that an audit was conducted during the month of June, 2022. It is submitted that during the course of the audit, the petitioner has paid the tax due for the month of July, 2017 on 04.06.2022. It is submitted that the audit report in GST ADT-02 was also furnished to the petitioner on 19.08.2022. Thereafter, the petitioner was issued with a notice in DRC-01A on 26.08.2022, to which the petitioner has replied and thereafter, a show cause notice was issued on 22.09.2022, to which the petitioner has replied on 12.10.2023, which has now culminated in the impugned order dated 30.11.2023.

10.It is submitted further that the respondent has complied with the requirements of Section 61(iii), inasmuch as the audit report in GST ADT-02 was furnished to the petitioner on 19.08.2022. It is submitted that the benefit of Section 73(viii) of the CGST Act, 2017 would inure to the petitioner only if the petitioner had paid the disputed tax along with interest within thirty days of isue of show cause notice. It is submitted that in this case, the tax was paid for the month of July, 2017 on 04.06.2022 and the interest was paid only on 27.12.2022 ie., after the issuance of the show cause notice on 22.09.2022. It is submitted that the payment was beyond the period of 30 days from the date of issuance of notice dated 22.09.2022 and therefore, the benefit of payment of reduced penalty under Section 73(viii) of the CGST Act, 2017, will not apply.

11.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

12.The facts are not in dispute. As far as the denial of input tax credit is concerned, there appears to be discrepancy in the GST and the number given by the Supplier in the invoice raised by the Supplier on the petitioner. The petitioner can get suitable certificate from the supplier that the sale was indeed made to the petitioner.

13.It is noticed that the petitioner had filed returns for the assessment year 2017-2018 on 30.04.2022, which is the belated returns filed by the petitioner. In the return that was filed belatedly by the petitioner, the petitioner has accepted the short payment declared as the taxable turnover and yet had failed to pay the tax in time. The petitioner paid the tax only on 04.06.2022. Therefore, show cause notice was issued to the petitioner on 22.09.2022. There is an inordinate delay in payment admitted tax liability in the return that was filed on 30.04.2022 for the assessment year 2017-2018. The petitioner cannot take advantage of its own mistake and state that the petitioner is not liable to pay penalty on account of belated filing of returns in GSTR 9 on 30.04.2022.

14.In my view, there is no merit in the submission of the learned counsel for the petitioner, inasmuch as tax was belatedly paid on 04.06.2022. The interest on belated payment of tax for the month of July, 2017, was remitted by the petitioner only on 27.12.2022. The payment was not within 30 days from the date of issuance of the Show Cause Notice dated 22.09.2022. The Show Cause Notice dated 22.09.2022 preceded an audit, issuance of audit report in GST ADT-02 on 19.08.2022.

15.It is during the audit, the petitioner paid tax on 04.06.2022. Therefore, the Writ Petition is not maintainable. It is therefore liable to be dismissed. However, considering the fact that the petitioner may choose to file an appeal before the appellate Authority under Section 107 of the GST Act, 2017. Liberty is given to the petitioner to file such an appeal within a period of 30 days from the date of receipt of a copy of this order.

16.The petitioner can give proper explanation for the discrepancy in the GST number and in the invoices raised by the supplier, namely Vinvent Chemilab Private Limited and Moorthy Industries. The petitioner may also furnish the details of the discrepancy insofar as the invoice raised on the petitioner from Balaji Industries. This may be furnished by the petitioner before the appellate Commissioner in the proposed appeal to be filed pursuant to the order passed by this Court. The appellate Commissioner may pass an independent order without getting influence by the observations contained here. It is made clear that the observations contained herein are only for the purpose of denying the relief sought for in this writ petition.

17.The Writ Petition stands dismissed with the above liberty. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No

04.04.2024

C.SARAVANAN, J.

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