BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12218 of 2022
and
W.M.P.(MD) Nos.8689 & 8690 of 2022

Tvl.Vectra Computer Solutions,
Represented by its Partner,
K.K.Suresh Babu,
S/o.K.P.Krishnamurthy,
No.41, North Veli Street,
II Floor, Madurai - 625 001. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (ST),
Tamilsangam Salai Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020.

3.The State Tax Officer,
Inspection Cell - III,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned proceedings of the third respondent in Form DRC-08 in GSTIN:33AADFV0487D1ZE dated 11.08.2021 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

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ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 11.08.2021 passed by the third respondent in Form GST DRC-08.

2. This is the second round of litigation before this Court. Earlier, the petitioner had filed W.P.(MD) No.9531 of 2020 challenging the order dated 03.01.2020 in Form GST DRC-07 summarizing the demand confirmed *vide* order dated 22.01.2019. By an order dated 22.11.2019, for the Assessment Year 2017-2018, the third respondent confirmed the demand of **Rs.66,88,378/-** as detailed below:-

Table No.1

Defect No.	***Defect***	***Tax Due***
1	Balance of Tax due to be paid as per Sales List filed	Rs. 67,583/-
2	Tax due on difference of Turnover between GSTR-1 with Profit and Loss Account as per I.T. Statement	Rs.29,60,585/-
3	Tax due on difference of purchase Turnover between purchase list and Profit and Loss Account as per I.T. Statement	Rs.32,74,468/-
4	Tax Due on Income and Service Charge Deductions	Rs. 3,85,742/-
Total Tax Due		**Rs.66,88,378/-**

3. By the aforesaid order dated 22.11.2019, the penalty was also imposed under Section 74 of the TNGST Act, 2017 for an equal amount of **Rs.66,88,378/-**. The amount confirmed *vide* the order dated 22.01.2019 was also reflected in Form GST DRC-07 dated 03.01.2020.

4. By an order dated 25.03.2021 in W.P.(MD) No.9531 of 2020, this Court had set aside the aforesaid order in Form GST DRC-07 dated 03.01.2020 and remanded the case back to the third respondent to pass a fresh order, with the following observations:-

"*5. Though very many grounds have been urged on either side, the order impugned in this writ petition has to be quashed on the simple ground that no personal hearing was granted. The learned counsel appearing for the petitioner drew my attention to Section 75(4) of the CENTRAL GOODS AND SERVICES TAX ACT, 2017 which states that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*

6. I carefully went through the contents of the notice dated 29.10.2019 issued by the third respondent. Nowhere in the said notice, personal hearing has been afforded to the petitioner herein. In the impugned order also, it is nowhere mentioned that such opportunity was afforded to the petitioner.

7. On this sole ground, the order impugned in this writ petition is quashed. The matter is remitted to the file of the third respondent to pass orders afresh in accordance with law. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed."

5. Pursuant to the aforesaid order, the petitioner was issued with a notice dated 15.04.2021 to which the petitioner partly replied on 30.04.2021 and thereafter, another notice was issued to the petitioner on 07.06.2021 which was also replied by the petitioner on 10.06.2021. Following the same, a Notice in Form GST DRC-01A dated 01.07.2021

was issued to the petitioner, wherein, the demand that was proposed earlier was modified under the following 4 heads as detailed below:-

Table No.2

Defect No.	*Defect*	*Turnover (Rs.)*	*Tax (Rs.)*	*Penalty (Rs.)*
1	Inward Supply Omission	86,43,354	7,77,902	7,77,902
2	Outward Supply Omission	205,12,016	36,92,163	36,92,163
3	Wrong availment of ITC	Nil	23,35,892	23,35,892
4	Other Income and other Expenses	75,69,546	13,62,518	13,62,518
Total		**367,24,916**	**81,68,475**	**81,68,475/-**

Table No.2A

	Tax Due (Rs.)	*Penalty Due (Rs.)*
CGST	40,84,238	40,84,238
SGST	40,84,238	40,84,238
Total	**81,68,475**	**81,68,475**

6. The petitioner has replied to the said Notice in Form GST DRC-01A dated 01.07.2021 on 28.07.2021 which has culminated in the impugned order passed on 11.08.2021 under Rule 142(7) of the TNGST Rules, 2017 in Form DRC 08.

7. It is noticed that when the petitioner has appeared for personal hearing on 28.07.2021, the petitioner has filed the purchase list, sales list and objection letter. The third respondent after considering the objections of the petitioner, has taken into consideration of the purchase turnover and sales turnover under the GST Regime w.e.f. 01.07.2017 and has finally arrived at the following calculation:-

Table No.3

Defect No.	*Defect*	*Turnover (Rs.)*	*Reversal of ITC (Rs.)*			*Tax Due (Rs.)*	
			IGST	*CGST*	*SGST*	*CGST*	*SGST*
1	Inward Supply Omission	1,94,496	Nil	Nil	Nil	17,505	17,505
2	Outward Supply Omission	168,60,232	Nil	Nil	Nil	14,78,509	14,78,509
3	Wrongly availment of ITC	Nil	16,682	11,59,605	11,59,605	Nil	Nil
4	Other Income and other Expenses	21,34,408	Nil	Nil	Nil	1,92,097	1,92,097
Total		**191,89,136**	**16,682**	**11,59,605**	**11,59,605**	**16,88,111**	**16,88,111**

Table No.4

	IGST	*CGST*	*SGST*	*TOTAL*
Reversal of ITC	16,682	11,59,605	11,59,605	23,35,892 *
Tax Due	NIL	16,88,111	16,88,111	33,76,222 **
Total	16,682	28,47,716	28,47,716	57,12,114
Penalty Due @ 100%	16,682	28,47,716	28,47,716	57,12,114

Reversal of ITC	**: Rs.23,35,892/-**	**}**
Tax due	**: Rs.33,76,222/-**	**} Rs.57,12,114/-**
Penalty due	**: Rs.57,12,114/-**	

* Amount in Sl.No.3 to Table No.2 towards "wrong availment of Input Tax Credit"

** Sub total of the tax amount in Table No.3

8. The learned counsel for the petitioner would submit that a part of the demand relates to delayed availing of Input Tax Credit under Section 16(4) of the GST Act, 2017. This issue was addressed by the GST Council in its 53rd Meeting held on June 22, 2024, and is being remedied under the Finance (No.2) Bill, 2024 (Bill No.55 of 2024) whereby the delay in availing Input Tax Credit is being condoned. Clause 114 & 146 of the Finance (No.2) Bill, 2024 (Bill No.55 of 2024) read as under:-

Clause 114	Clause 146

114. In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after sub-section (4), the following sub-sections shall be inserted, namely:— "(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017- 18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021. (6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,— (i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or (ii) for the period from the date of cancellation of registration or the effective date of cancellation of	**146.** No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 114 been in force at all material times.

9. The demand on account of the alleged delay in availing the Input Tax Credit purportedly comes to **Rs.23,35,892/-** out of **Rs.57,12,114/-**. If that being so, and if the submission of the petitioner is accepted, the aforesaid Input Tax Credit of Rs.23,35,892/- is *prima facie* covered by the proposals in Clause 114 & 146 of the Finance (No.2) Bill, 2024 (Bill No.55 of 2024). It would require a detailed consideration.

10. Considering the above facts and circumstance of the case, the impugned order to that extent is set aside and the case is remitted back to the third respondent to pass fresh order duly considering the proposals in the recommendation of the GST Council in its 53rd Meeting held on 22.06.2024 and the proposals in Clause 114 & 146 of the Finance (No.2) Bill, 2024 (Bill No.55 of 2024).

11. As far as the balance amount of Rs.33,76,222/- out of the confirmed demand of Rs.57,12,114/- is concerned, a liberty is given to the petitioner to file a statutory appeal, within a period of thirty (30) days from today.

12. In the result, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.07.2024

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

Copy To:

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C.SARAVANAN, J.

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