BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) No.12067 of 2024
and
W.M.P.(MD)Nos.10733 & 10735 of 2024

M/s.Perfect Engineering Works,
Represented by the Proprietor Muthuraman Sathyabama. ... Petitioner

Vs.

1.The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai – 625 002.

2.The Assistant Commissioner of CGST and Central Excise,
Madurai-II Division,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the impugned order passed by the 2nd respondent in No.MDU-GST-ASC-03/2024-GST dated 11.03.2024 and quash the same.

For petitioner : Mr.N.Mariappan
For respondents : Mr.R.Nandhakumar
Senior Panel Counsel

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ORDER

The present Writ Petition is filed challenging the impugned order dated 11.03.2024 inasmuch as the impugned order proceeds to levy GST on the very same transaction, on the basis of multiple E-Way Bills generated in respect of a single invoice/transaction.

2. The learned counsel for the petitioner submits that the petitioner is engaged in manufacturing of match box filling machines. These are huge machineries weighing close to 12 tonnes. In view of the same, these machineries are normally split into three consignments and loaded into different vehicles/lorries. Due to the fact that the E-Way module does not contemplate the E-Way Bills being generated in respect of a transaction, which is transported in more than one vehicle, the petitioner was constrained to generate three E-Way bills for a single transaction/invoice.

3. Based on the report of the Superintendent of CGST and Central Excise, Sivagangai Range, Sivagangai consequent to the scrutiny of GSTR-1, GSTR-3B returns filed by the petitioner for the tax period 2018-19 and e-way bill generated

by the petitioner during the said period, a show cause notice was issued to the petitioner by the second respondent dated 27.12.2023 alleging that,

(i) The taxable value declared in e-way bills generated by the petitioner was more than the value declared in GSTR-3B returns and thus, there is a short payment of GST;

(ii) The taxpayer had filed GST returns after the due date during 2018-19 and thus, there is interest liability on the GST payment by cash.

4. As a matter of fact, the petitioner *vide* his reply dated 20.02.2024 furnished the sample copies of the invoices in the E-Way Bill for two transactions. The same is extracted hereunder:

We are manufacturing Match Box Filling machines, its total weight of the machine is nearly 12 Ton and it cannot be loaded in a single lorry, hence, we have splitted the machine in three different lorry's and dispatched it. Due to non availability of multiple vehicle option in E-Way bill module we have generated 3 different E-way bills for same invoice. I furnish the sample details as below:

Sl. No.	Invoice No. / Date	Inv. Value Rs.	E-way bill no / Date	Lorry No.
1	10/GST/PFW/18-19 / 16.06.2018	76,70,000/-	541036263198 / 16.06.2018	TN30 R 3906
2	-DO-	-DO-	591036269191 / 16.06.2018	TN28 AA 6150
3	-DO-	-DO-	501036272527 / 16.06.2018	TN28 AA 0158
4	12/GST/PFW/18-19 / 01.07.2018	80,24,000/-	551039429623 / 01.07.2018	TN69 BC 7066
5	-DO-	-DO-	521039425827 / 01.07.2018	TN67 AH 7299
6	-DO-	-DO-	511039426377 / 01.07.2018	TN88 B0358

We followed the same procedure for dispatch of all our outward supplies, hence, there is a huge turnover difference between GSTR-3B value and E-Way bill value. We have paid our tax dues on proper time by filing our GSTR-1 & GSTR-3B and there is no turnover difference between these two returns and our Profit and loss account. The turnover difference in E-way bill is due to generation of multiple E-way bills for same invoice. I herewith enclose the supportive evidence for the above plea for your perusal and kind consideration.

Upto 2020 we have followed the same procedure due to lack of knowledge in generation of E way bill. From 2020 onwards the E-way bill portal itself refused to accept same invoice no again and we choose the option of Multiple vehicle for the same invoice no. in the "Part-B – Transporter Details" and now the error was resolved.

With respect to Para 7.2 (Interest on belated payment of Cash in GSTR-3B) I accepted your contention and paid the appropriate interest of Rs. 40,117/- through DRC-03 and the same is enclosed.

With the above words I wish to conclude that the error committed is not at all a willful intention and it is purely due to lack of knowledge and proper guidance. Kindly accept my plea and I request you to conclude the issue without any further proceedings.

5. It was also made clear that the transaction referred to in the said reply dated 20.02.2024 was only sample and that they have followed the very same procedure even in respect of the remaining transactions.

6. In the impugned order, after recording the reply, it is stated that a verification report was called for from the Range Officer, Sivagangai, pursuant to the personal hearing held on 20.02.2024. The Range Officer, Sivagangai, *vide*

letter in O.C.No.19/2024 dated 04.03.2024 submitted the verification report, wherein, it was found that the CGST and SGST had been calculated three times in respect of these two invoices/transactions. Resultantly, the impugned order has excluded the above two transactions. The relevant portion of the order is extracted hereunder:

A verification report in this regard has been called for from the Range and the Range Officer Sivaganga Range vide letter O. C. No. 19/2024 dated 04.03.2024 have submitted the verification report is reproduced below:

[illegible]

Invoice No / Date	E-way Bill No / Date	CGST	SGST
[illegible]	[illegible]	6,12,000/-	6,12,000/-
-do-	[illegible]	6,12,000/-	6,12,000/-
-do-	[illegible]	6,12,000/-	6,12,000/-
[illegible]	[illegible]	5,85,000/-	5,85,000/-
-do-	[illegible]	5,85,000/-	5,85,000/-
-do-	[illegible]	5,85,000/-	5,85,000/-

The above details have been [illegible] and further, it is submitted that the amount of CGST Rs. 6,12,000/- & SGST Rs. 6,12,000/- and CGST Rs. 5,55,000/- & SGST Rs. 5,55,000/- have been calculated [illegible] while preparing the worksheet for the Show Cause Notice.

[illegible] the taxpayer [illegible] the CGST & SGST amount [illegible] based on the E-way bills [illegible] E-way bills may be excluded while [illegible]

Invoice No / Date	E-way bill No / Date	CGST	SGST
10/GST/[illegible]/18-19 16.06.2018	[illegible] 16.06.2018	6,12,000/-	6,12,000/-
-do-	[illegible] 16.06.2018	6,12,000/-	6,12,000/-
[illegible]/18-19 21.07.2018	[illegible] 21.07.2018	5,55,000/-	5,55,000/-
-do-	[illegible] 21.07.2018	5,55,000/-	5,55,000/-
[illegible]		[illegible]	2334000/-

Based on the taxpayer reply and the verification report submitted by the Range Officer [illegible], I find that the an amount of Rs. 47,88,000/- (CGST Rs. 23,94,000/- & SGST Rs. 23,94,000/-) pertains to the duplicate e-way bills and has to be reduced from the total tax liability mentioned in the Show Cause Notice as per the E-way bill

Sl	[illegible]	IGST	CGST	SGST	TOTAL (Rs)
1	[illegible] E-Way bills taken in the Show Cause Notice	540000	25600938	[illegible]	51862876
2	Total tax liability to be reduced from the E-way bill liability mentioned above under Sl. No. 1 due to duplication of E-way bills	0	2394000	2394000	4788000
3	[illegible] after reducing the tax amount of duplicate E-way bills submitted by the taxpayer during personal hearing	540000	23206938	[illegible]	47073876
4	Tax paid in GSTR-3B	540000	16030033	[illegible]	32720066
5	Difference (3-4)	0	7176905	7176905	14353810

Therefore, I reduce the demand proposed in the said Show Cause Notice and hold the demand of Rs. 1,43,53,810/- (CGST Rs. 71,76,905/- and SGST Rs. 71,76,905/-) proposed in the Show Cause Notice under section 73(1) of the CGST / TNGST Act, 2017 along with applicable interest under Section 50(1) of CGST / TNGST Act, 2017. And conclude that the GST to the tune of Rs. 1,43,53,810/- has to be recovered under Section 73(9) of the CGST / TNGST Act, 2017 along with interest and penalty.

7. It is submitted by the learned counsel for the petitioner that during the period 2018-19, the petitioner had effected sales of 72 match box filling machines adopting the same modus, which was found to be in order, in respect of two sample transactions, which was referred to in the reply dated 20.02.2024. That they would have furnished the details for the remaining 70 transactions if the Adjudicating Authority had only informed them that he intends to verify all the transactions.

8. It is submitted by the learned counsel for the petitioner that they have with them documentary evidence, which are identical to the transactions, which has been found by the Range Officer as well as the Adjudicating Authority to be in order, in respect of the remaining 70 transactions and that an opportunity may be granted inasmuch as the impugned order has been passed without even hearing the petitioner nor putting the petitioner on notice that the respondents intended to verify invoices of all transactions.

9. The learned Senior Panel Counsel for the respondents would contend that the impugned order passed by the second respondent is an appealable order and therefore, this Writ Petition may not be entertained.

10. Having considered the submissions on both sides, this Court finds that there is some merit in the submissions of the learned counsel for the petitioner, more so, when the modus has been found to be in order in respect of the two transactions with regard to which documents were furnished along with the reply. Importantly, it was clearly indicated in the reply dated 20.02.2024 that the two transactions are only sample transactions and that the modus adopted was the same in respect of the remaining 70 transactions. If the respondent intended to verify the documents in respect of the remaining transactions, he could have put the petitioner on notice, which have enabled them to furnish the documentary evidence in support of remaining 70 transactions along with their reply.

11. In view there of, the impugned order is set aside and liberty is granted to petitioner to produce the documentary evidence in respect of the remaining 70 transactions to the respondents within a period of four weeks from the date of receipt of a copy of this order. Failure to furnish the documentary evidence would result in the impugned order getting revived. If such document/representation/reply is filed within the stipulated time, namely, four weeks from the date of receipt of a copy of this order, the same shall be

considered and orders passed thereon in accordance with law after affording reasonable opportunity of hearing to the petitioner.

12. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

06.08.2024

To
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2.The Assistant Commissioner of CGST and Central Excise,
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MOHAMMED SHAFFIQ, J.

apd

W.P.(MD) No.12067 of 2024

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