BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.15266 of 2024
and
W.M.P.(MD) Nos.13383 and 13384 of 2024

M/S.Thirumagal Dyeing Works
rep. by its Partner,
V.A.Panneerselvam ... Petitioner

/vs./

1.Joint Commissioner of GST and Central Excise,
1, Williams Road,
Cantonment,
Tiruchirappalli 620 001.

2.Assistant Commissioner,
Karur Jurisdiction, Karur
Erode, Tamil Nadu. ... 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 1st respondent in Order-in-Original No.16/2023-GST (DIN-20231059XN000000A7B2) dt.17.10.2023 and the consequential summary of the order in Form GSTR DRC-07 in Ref.No.ZD330524100537Q dt.15.05.2024 issued by the 2nd respondent and quash the order dt.17.10.2023 issued by the 1st respondent and the consequential order dt.15.05.2024 issued by the 2nd respondent.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents : Mr.R.Nanda Kumar
Senior Standing Counsel

ORDER

The challenge in this writ petition is to the DRC-07 notice issued by the second respondent herein, wherein a demand had been made in respect of three counts.

2. Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner and Mr.R.Nanda Kumar, learned Senior Standing Counsel for the respondents.

3. The learned counsel for the petitioner had vehemently contended that the first respondent herein pursuant to the show cause notice issued to the petitioner and after hearing the petitioner had held that the petitioner had reversed the wrongly availed ITC in the petitioner's GSTR-3B filed for the month of February, 2020 on 28.10.2021 and based upon the factual finding ordered that the amount had been wrongly availed, which was reversed subsequently to be treated as

payment under Section 73 of the CGST Act, 2017. When that be so, the DRC-07 notice including the said amount by the second respondent is wholly erroneous and hence, the learned counsel for the petitioner would pray this Court to set aside the said portion of the DRC- 07 notice. With regard to the other two documents, she would submit that the petitioner had proposed to invoke the amnesty that had been provided by the Department.

4. Countering such argument, Mr.R.Nandakumar, learned Senior Standing Counsel appearing for the respondents, had vehemently contended that there was no error in including the said amount to the demand notice. Even if it is a wrong demand, he would submit that it is for the petitioner to file an appeal against the same and get it rectified. Further reason has also been given in the counter affidavit filed by the second respondent that there is no provision in the portal to enter the amount or adjust the amount which was already paid/reversed.

5. He also relied upon the various provisions of the GST Act, 2017 to contend that there is no error in the DRC-07 notice. He had also taken me through the various averments made in the counter affidavit filed by the second

respondent to sustain the impugned notice. He had also relied upon the judgment of the Hon'ble Apex Court in the case of ***Asstt.Commr. (CT) LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Ltd.,*** reported in ***2020 (36) G.S.T.L. 305 (S.C.)*** to contend that the writ petition itself is not maintainable.

6. I have considered the rival submissions made by the learned counsel on either side.

7. The notice had been issued by the first respondent to the petitioner, which has also been duly responded. Pursuant to the personal hearing that had been granted to the petitioner, the first respondent had considered the case in detail and had passed orders on 17.10.2023. With respect to the third item in the demand notice, which arises out of wrong availing of ITC credit by the petitioner, the first respondent had recorded the factual finding that the petitioner had reversed the wrong claim even as early as on 28.02.2021 in their GSTR-3B for the month of February, 2020.

8. Based upon the said factual finding, the first respondent had also ordered that the wrongly availed ITC of Rs.3,76,67,083/-, which was paid/reversed subsequently by the petitioner in its GSTR-3B, was to be treated as payment under Section 73 of the CGST Act, 2017. When that be so, the petitioner had been again demanded in the DRC-07 notice to pay the said amount together with interest. Even though the learned standing counsel had strenuously relying upon the counter affidavit tried to sustain the DRC-07 notice, I do not find any averment specifically sustaining the said demand.

9. In fact, in the counter affidavit, the second respondent had categorically admitted that the petitioner had reversed the said wrongly availed ITC, however had expressed his inability, as the portal would not permit such reversal. The said reason given by the second respondent is wholly unacceptable. He ought not to have included the said demand when the first respondent himself had ordered such reversal to be treated as a payment under Section 73 of the CGST Act, 2017. The demand in respect of the said account in item No.3 is wholly erroneous and therefore, I am inclined to set aside the said demand under item No.3 of the impugned DRC-07 notice. In respect of the other claims as submitted by the

learned counsel for the petitioner, he is at liberty to approach the concerned Authority seeking amnesty.

10. In view of the aforesaid findings, the Writ Petition is partly allowed setting aside the demand in respect of item No.3 of the impugned DRC-07 notice dated 15.05.2024 and in all other aspects, the petitioner is at liberty to workout his remedy as available in law. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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11.11.2024

K.KUMARESH BABU, J.

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