BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17159 of 2024
and
W.M.P.(MD)No.14796 of 2024

M/s.Dhanalakshmi Srinivasan Sugars Pvt. Ltd.,
Represented by its Authorised Signatory N.Chinnappan. ... Petitioner

Vs.

The State Tax Officer(ST),
Nanguneri Assessment Circle,
Commercial Taxes Buildings,
Nanguneri. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records in assessment orders issued by the respondent in GSTIN:33AACCD7684E1ZO/2018-19 dated 30.04.2024 and quash the same as illegal, arbitrary and in violation of the principles of natural justice and contrary to Section 49 of TNGST Act,2017 and Rule 88A of the TNGST Rules, 2017 and Circular issued by the CBEC in Circular No.98/17/2019-GST and dated 24.04.2019 and direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply and records filed by the petitioner.

For petitioner : Mr.N.Sudalai Muthu
For respondent : Mr.J.K.Jayaselan
Government Advocate

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ORDER

Heard learned counsel for the petitioner and learned Government Advocate for the respondent.

2. The petitioner is challenged the impugned order passed on 30.04.2024, wherein the respondent has now ultimately demanded as sum of Rs.64,15,176/- (Rs.32,07,588/- towards CGST and Rs.32,07,588/- towards SGST) together with interest and penalty thereon. Details of the demand confirmed in the impugned order is as below:

Act	Period	Tax	Interest	Penalty U/s 73(9)
SGST Act	2018-19	Rs.32,07,588/-	Rs.29,05,815/-	Rs.3,20,758/-
CGST Act	2018-19	Rs.32,07,588/-	Rs.29,05,815/-	Rs.3,20,758/-
Total		**Rs.64,15,176/-**	**Rs.58,11,630/-**	**Rs.6,41,517/-**

3. The case of the petitioner is that the petitioner was issued with notices in ASMT 10 dated 27.11.2022 as also in DRC 01 dated 23.08.2023, to which, the petitioner has replied on 16.11.2023 and on 26.02.2024.

4. It is submitted that in the notice in DRC 01, the proposal was confined

only to the different between the Input Tax Credit availed in GSTR 3B and auto populated Input Tax Credit in GSTR 2A as detailed below:

Particulars	SGST ITC	CGST ITC
ITC as per GSTR3B(as per GSTR 9)	Rs.3,19,05,019/-	Rs.3,19,05,019/-
ITC as per GSTR2A	Rs.2,07,84,828/-	Rs.2,07,84,828/-
Turnover shortly reported (GSTR3B-GSTR2A)	Rs.1,11,20,190/-	Rs.1,11,20,190/-

5. The allegation was that the petitioner has not produced any documentary evidence, in the form of a certificate from the supplier that the supplier had effected the supply in respect of the said invoices and tax on the supplies was actually been paid by the supplier in its Return in GSTR 3B as per the Circular No.183/2023. In view of the same, the reply filed by the petitioner on 27.04.2022 in response to the notice in Form ASMT-10 dated 27.11.2021, was unacceptable.

6. It is the specific case of the petitioner that the petitioner has explained the position in its reply dated 16.11.2023 as also in a subsequent reply dated 26.02.2024, wherein the details of Input Tax Credit availed and the carrying over IGST tax amount, that was transferred and unutilised, was given as below:

S.No	PARTICULARS	CGST Rs.	SGST Rs.
1.	ITC Availed on GSTR-2A	2,08,20,243	2,08,20,243
2.	RCM Tax Amount Utilized	67,91,615	67,91,615
3.	Carry Over IGST Tax amount Transferred & Utilized	37,22,528	3722,528
4.	Non-Filing of Invoices - default Suppliers Tax Amount (Certificate Attached as per Notification No 183/15/2022-GST dated 27/12/2022	6,49,258	6,49,258
5.	Total ITC	3,19,83,644	3,19,83,644
6.	TOTAL ITC claimed and Utilized on GSTR-3B for the year 2018-19	3,19,05,019	3,19,05,019
7.	Excess Tax Paid	78,625	78,625

7. It is submitted that despite the petitioner explaining the position, the respondent has confirmed the demand for Rs.64,15,176/- together with interest and penalty thereon as detailed above.

8. The learned Government Advocate for the respondent, on the other hand, would submit that the impugned order does not suffer from any irregularities and warranting no interference under Article 226 of the Constitution of India.

9. It is further submitted that in the impunged order, it has been categorically stated that the petitioner had no excess Input Tax Credit as far as IGST is concerned and therefore, the demand that has been confirmed in the impunged order does not warrant any interference.

10. By way of rejoinder, the learned counsel for the petitioner has drawn attention to the extract from the Electronic Credit Ledger of the petitioner for a period between 01.07.2017 to 30.04.2018, wherein on the last date of closing balance, as far as Input Tax Credit availed on IGST (uncredit tax) for a sum of Rs.23,72,535/- is concerned, the same was the opening balance in the Electronic Credit Ledger of the petitioner for a period between 01.05.2018 to 30.04.2019.

11. The explanation that from the forthcoming from the petitioner, it is not clear to how the petitioner could have made dual entry on the IGST allegedly borne by the petitioner.

12. That apart, IGST, which has been shown in the Electronic Credit Ledger for the either period as closing balance or opening balance, is

Rs.23,72,535/-. However, in the reply, the petitioner has claimed IGST amount of Rs.37,22,528/- each under CGST credit and SGST credit.

13. It is noticed that the Electronic Credit Ledger of the petitioner for the period in dispute between 01.05.2018 to 30.04.2019 also indicates that there was only balance after adjustment. The petitioner ought to have given a clear explanation.

14. It is noticed that the table to the reply dated 26.02.2024, which has been extracted above gives an exaggerate figure. The Court cannot decide the correctness of the same. *Prima facie* it appears to be an credit tax position explained by the petitioner is incorrect as it is imposible to avail IGST amount of Rs.37,22,528/-, each under CGST credit and SGST credit

15. Be that as it may, the Court is inclined to give temporary relief to the petitioner by directing the respondent to keep the recovery proceedings in abeyance for a period of three months from today. The petitioner may at its discretion file a revision petition under Section 161 of the respective GST

enactments within a period of 30 days from today.

16. In case such a revision petition has been filed within a period of 30 days from today, such a revision petition shall be considered and disposed of by the respondent on merits. In case the petitioner's petition is rejected, the petitioner may file a statutory appeal within a period of 30 days thereafter. Pending disposal of the petition under Section 161 of the respective GST enactments, all recovery proceedings shall be kept in abeyance for a period of three months from today. In case, the petitioner fails to file such a petition within such time, the respondent is at liberty to proceed against the petitioner in the manner known to law.

This Writ Petition is disposed of, with above directions. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No **25.07.2024**
Internet : Yes / No
apd
To
The State Tax Officer(ST),
Nanguneri Assessment Circle,
Commercial Taxes Buildings,
Nanguneri.

C.SARAVANAN, J.

apd

W.P.(MD) No.17159 of 2024

25.07.2024