BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.17691 of 2024
and
W.M.P.(MD).Nos.15175 and 15176 of 2024

M/s.Sripathi Paper and Boards Private Limited,
Represented by its Assistant Vice-President. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Virudhunagar-3 Circle,
NH 07 Madurai Road,
Virudhunagar – 1. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in Case:GSTIN/33AAGCS7439C1ZG/2019-20, quash the order dated 15.05.2024 passed therein.

For Petitioner	:	Mr.P.V.Sudhakar
For Respondent	:	Mr.R.Sureshkumar Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 15.05.2024 on the premise that the impugned order suffers from errors apparent on the face of record.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a manufacturer in paper and paper board registered under the GST Act, 2017. The petitioner filed their returns and paid appropriate taxes. While so, audit was conducted in the petitioner's place of business on 20.01.2022, 21.01.2022, 24.01.2022, 28.01.2022, 01.02.2022 and 03.02.2022 in terms of Section 65 of the TNGST Act for the year 2019-2020. During the course of Audit, 45 defects were noticed. A show cause notice in DRC-01 was issued in accordance with the provisions of Section 74 of the TNGST Act and the petitioner submitted its detailed objection in respect of all the defects. Pursuant thereto, the impugned order was passed by the respondent confirming the proposal, whereby, 19 out of 45 defects were dropped, while 26 defects were confirmed.

3. It is submitted by the learned counsel for the petitioner that the impugned order suffers from error apparent on the face of record, as evident

from the fact that there has been duplication and non-consideration of the reply filed by the petitioner. As an illustration, the learned counsel would submit that due to a fire accident, one of the plants/buildings was destroyed and the petitioner proposed to lodge an insurance claim to an extent of Rs.30.68 crores. However, the actual claim was confined to Rs.19.79 crores and what was received as insurance claim from the Insurance Company was only 16.18 crores. However, the impugned order proceeds to disregard the fact that the actual insurance claim that was granted to the petitioner was only Rs.16.18 crores, instead, has reversed the ITC on the initial estimate of Rs.30.68 Crores. This, according to the petitioner, suffers from error apparent on the face of record.

3.1. Yet another illustration was the fact that while reckoning tax liability, there has been duplication, as would be evident from the following table:

STATEMENT SHOWING TAX LIABILITY DETERMINED

Sl.No	Para No	Revenue Involved					
		IGST	CGST	SGST	CESS		TOTAL
1	1/2019-20		8500	8500			17000
2	2/2019-20	416451	[illegible]	[illegible]			[illegible]
3	3/2019-20	Dropped					
4	4/2019-20		2025	2025			4050
5	5/2019-20	Dropped		0		0	
6	6/2019-20	Dropped					
7	7/2019-20	Dropped					
8	8/2019-20	ITC	22,455,127	22,455,127			[illegible]
		RCM	1250000	1250000			2500000
			1250000	1250000			2500000
			2500000	2500000			5000000
			500000	500000			1000000
			1500000	1500000			3000000
			500000	500000			1000000
			1150000	1150000			2300000
		Total paid	4,130,000	4,130,000			[illegible]
		Balance	11,985,127	11,985,127			[illegible]
							10030453
9	9/2019-20	[illegible]	[illegible]	[illegible]			[illegible]
10	10/2019-20				[illegible]		[illegible]
11	11/2019-20	1425497					[illegible]
12	12/2019-20	[illegible]					[illegible]
13	13/2019-20	[illegible]	3575144	3575144			
14	14/2019-20	Dropped					

15	15/2019-20	[illegible]	[illegible]	[illegible]			[illegible]
16	16/2019-20		2698	2698	0		5396
17	17/2019-20						0
18	18/2019-20		1599548	1599548			3199096
19	19/2019-20	Dropped					0
20	20/2019-20	[illegible]					[illegible]
21	21/2019-20		1431150	1431150			[illegible]
22	22/2019-20		[illegible]	[illegible]			12566240
23	23/2019-20		[illegible]	4266255			[illegible]
24	24/2019-20	Dropped					0
25	25/2019-20	Dropped					0
26	26/2019-20		[illegible]	[illegible]			512054
27	27/2019-20		[illegible]	[illegible]			[illegible]
28	28/2019-20	Dropped	0	0			0
29	29/2019-20						0
30	30/2019-20		[illegible]	[illegible]			73144
31	31/2019-20	Dropped					0
32	32/2019-20	Dropped					0
33	33/2019-20	[illegible]					[illegible]
34	34/2019-20	1548575					1548575
35	35/2019-20	Dropped					0
36	36/2019-20	[illegible]	[illegible]	7594816	[illegible]		[illegible]
37	37/2019-20		[illegible]	[illegible]			[illegible]
38	38/2019-20						0
39	39/2019-20						0
40	40/2019-20	[illegible]					[illegible]
41	41/2019-20						0
42	42/2019-20		121177	121177			[illegible]
43	43/2019-20						0
44	44/2019-20		[illegible]	[illegible]			79258
45	45/2019-20		[illegible]	[illegible]			[illegible]
	Total	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
	LESS	AGENCY PAID					
	[illegible]		[illegible]	[illegible]			[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]			[illegible]
	TOTAL PAID	[illegible]	[illegible]	[illegible]			[illegible]
	Total	[illegible]	[illegible]	[illegible]	[illegible]	0	[illegible]

As seen from the above table, as regards Defect No.8, a sum of Rs. 4,49,10,254/- was to be reversed in view of the above fire accident. The petitioner has, as a matter of fact, during the course of assessment paid a sum of Rs.1.63 crores, thus only a sum of Rs.2.86 crores alone would remain. However, while calculating the demand, which has been arrived at Rs.20.32 crores, a sum of Rs.4.49 crores along with Rs.1.63 crores (twice) and Rs.2.86 crores have been taken into account resulting in a demand of Rs.8.98 crores, instead of Rs.2.86 crores. This, according to the petitioner, is clear illustration of the gross non-application of mind to the relevant factors by the Assessing Authority.

4. The learned counsel for the petitioner would then submit that there is alleged mismatch between GSTR-3B and GSTR-2A to the extent of Rs. 2,44,88,689/-. However, the above figure has been arrived at without taking into account the ITC, which has been brought forward from the previous year, if the same had been taken into account, the liability would stand substantially reduced.

5. The learned counsel for the petitioner would thus submit that the impugned order stands vitiated on the ground of being arbitrary and also on the premise that it suffers from error apparent on the face of record.

6. At this juncture, the learned Additional Government Pleader for the respondent would submit that assessment would be redone and the petitioner may submit its objections with regard to each of the defects along with documentary evidence.

7. In view thereof, the impugned order is set aside. It is open to the petitioner to treat the impugned order of assessment as a show cause notice and

submit its objections along with supporting documents/material within a period of six (6) weeks from the date of receipt of a copy of this order. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner.

8. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23.10.2024

Index : Yes / No
Internet : Yes/ No
Lm

To
The Assistant Commissioner (ST),
Virudhunagar-3 Circle,
NH 07 Madurai Road,
Virudhunagar – 1.

MOHAMMED SHAFFIQ, J.

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W.P.(MD).No.17691 of 2024

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