**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 30.08.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.P.(MD).No.19995 of 2024**
**and**
**W.M.P.(MD).Nos.16966 and 16968 of 2024**

Tvl.Sri Chima Note Book Private Limited,
Rep. by its Director : A.Marirajan. ... Petitioner

**Vs.**

The Assistant Commissioner (ST),
Sivakasi-III Assessment Circle,
Sivakasi. ...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 on the file of the respondent in GSTIN : 33AAHCS826741ZG/2019-29 dated 21.05.2024 and the consequent FORM GST DRC-07 issued in Reference No:ZD330524177025K dated 21.05.2024 and quash the same as illegal, invalid and against the principles of natural justice.

| | |
|---|---|
| For Petitioner | : Mr.A.Chandrasekaran |
| For Respondent | : Mr.R.Sureshkumar<br>Additional Government Pleader |

**ORDER**

The present Writ Petition is filed challenging the impugned order dated 21.05.2024 for the assessment year 2019-2020.

2. It is submitted by the learned counsel for the petitioner that earlier, the petitioner herein filed a Writ Petition before this Court in W.P.(MD).No.23261 of 2023 challenging the proceedings in Form GST DRC-07 dated 31.07.2023, whereby, this Court, after considering the submissions made on both sides, was pleased to pass the following order:

> *"5. The respondent is bound to discuss the evidence and pass a speaking order. Since the impugned order is bereft any reasoning, this Court is inclined to interfere with the impugned order.*
>
> *6. Accordingly, this writ petition is allowed and the impugned, dated 31.07.2023, is hereby quashed. The respondent is directed to reconsider the explanation submitted by the petitioner, grant personal hearing to the petitioner and thereafter shall pass speaking order. The said exercise shall be completed within a period of five months, from the date of receipt of a copy of the order."*

3. Despite specific directions of this Court to re-consider the explanation submitted by the petitioner and pass a speaking order, the respondent has proceeded to pass a non-speaking order by merely extracting the reply of the petitioner, without any discussion as to the objections put forth by the petitioner.

4. As regards the defects stated in the impugned order, the learned counsel for the petitioner made the following submissions:

**a) <u>Input mismatch of Input Tax Credit (ITC) on comparison between GSTR-3B & GSTR-2A and GSTR-3B & GSTR-5</u>:**

The discrepancy between GSTR-3B and GSTR-2A was explained by the petitioner with a supporting statement, which would show that purchases were effected during the period 2018-2019 and that the petitioner claimed ITC in the subsequent assessment year 2019-2020, but not later than August 2019. It was thus submitted that denial of ITC was improper. It was further submitted that in respect of ITC claimed by the petitioner, the seller/supplier of the petitioner has also remitted taxes along with their returns in GSTR-3B.

**<u>b) Discrepancy between GSTR-1 and E-Way bill outward supplies:</u>**

The Assessing Authority ought to have seen that e-way bills may not be mandatory when supplies are effected to persons where the value of taxable supply is below Rs.50,000/-, which was thereafter increased to Rs.1,00,000/-. It was thus submitted that in respect of such supplies, where the taxable value is below Rs.50,000/- or Rs.1,00,000/-, e-way bills were not generated, which resulted in the alleged discrepancy. The above explanation was not dealt with by the respondent in the impugned order.

c) Similarly proposal was made for suppression in respect of inward supplies on the premise there is a mismatch between the inward supplies and the e-way bills generated by the petitioner's supplier. The petitioner has stated in his objections, which was also recorded in the impugned order, that e-way bills were not generated in respect of supplies where the value was below the threshold, namely Rs.50,000/- or Rs.1,00,000/-. However, the impugned order has been passed by merely stating the following:

*"**Proper Officer Conclusion:***

***Defect No.1:***

*On verification of the back office portal excess ITC claimed as follows:*

| *IGST* | *CGST* | *SGST* |
|---|---|---|
| *As per credit ledger* | | |
| *361497* | *9727671* | *9727671* |
| *As per GSTR-2A* | | |
| *360632* | *9396530* | *9396530* |
| *Difference* | | |
| *865* | *331141* | *331141* |

*The taxpayer reply compared with back office ITC claim and elucidate that the taxpayer claimed excess ITC for IGST Rs.865, CGST Rs.331141, SGST Rs.331141. Hence, this defect is confirmed.*

***Defect No.2 and 3:***

*The tax payer reply not accepted. Hence, this defect is confirmed."*

5. The objections of the petitioner have not been dealt with by the respondent while passing the impugned order, the impugned order suffers from the vice of being a non-speaking order and thus, the same is liable to be set aside, more so, when there was a specific direction of this Court in the earlier round of litigation to pass a speaking order.

6. The learned Additional Government Pleader appearing for the respondent would submit that the respondent/authority may be granted one final opportunity and that they would consider the objections filed by the petitioner and pass a speaking order, which was agreed to by the learned counsel for the petitioner.

7. Recording the same, the impugned order passed by the respondent dated 21.05.2024 is set aside. The respondent/authority shall consider the objections filed by the petitioner and pass speaking order in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

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

**30.08.2024**

Index : Yes / No
Internet : Yes/ No
Lm

To
The Assistant Commissioner (ST),
Sivakasi-III Assessment Circle,
Sivakasi.

**MOHAMMED SHAFFIQ, J.**

Lm

**W.P.(MD).No.19995 of 2024**

**30.08.2024**