BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.21684 of 2024
and
W.M.P(MD).No.18317 of 2024

Tvl.Annai Abirami Electricals,
Represented by its Proprietor,
AR.Kumarappan ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (ST),
Dindigul Fort Assessment Circle,
Commercial Tax Office,
Sub-Collector's Office Road,
Dindigul – 624 201. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceeding of the second respondent in Reference No. ZD330724345422K/2019-20 dated 30.07.2024 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 30.07.2024 on the premise that the petitioner's claim of Input Tax Credit has been disallowed without considering the petitioner's objection, thereby suffers from violation of principles of natural justice.

2. The petitioner is a proprietary concern carrying on business under the name and style of "Annai Abirami Electricals" and dealer in wholesale of electrical goods and he is registered under the GST Act. It is submitted that during the assessment year 2019-2020, the petitioner filed its return and paid the appropriate taxes. The petitioner, while submitting his return, has inadvertently entered the Input Tax Credit in column 4(A)(3) instead of Section 4(A)(5), which submitted to be a clerical error apparent.

3. While so, a notice dated 22.05.2024 was issued, wherein it was proposed to reject the returns on the premise that the examination of the information furnished in the returns under various heads and also the information furnished in GSTR-1, GSTR-2A, GSTR-3B, EWB and other records revealed that the petitioner had not declared the correct tax liability while filing the annual returns found in GSTR-09, to which the petitioner responded by filing his reply on 14.06.2024, *inter alia* submitted that the Input Tax Credit has been inadvertently entered in 4(A)(3) instead of 4(A)(5). It is submitted that column 4(A)(3) is related to reverse charges and during the relevant period the petitioner had no liability on reverse charge. It was thus requested by the petitioner that he may be allowed to avail the Input Tax Credit which ought not to rejected only in view of inadvertent clerical error. The impugned order of assessment has been passed, whereby the reply of the petitioner is rejected by merely stating that the respondent authority is not satisfying with the petitioner's reply. Relevant portion is extracted hereunder:

> *"The taxpayer's reply is not satisfied and assessed to tax, interest and penalty for the year 2019-20 under TNGST Act, 2017."*

It is submitted that the impugned order is a non-speaking order and thus suffers from violation of principles of natural justice.

4. To the contrary, it was submitted by the learned Additional Government Pleader that the order is an appealable order and in any view the respondents can also invoke Section 161 of the GST Act to enable them to rectify the error apparent on the record.

5. This Court is of the view that there is merit in the submission of the learned counsel for the petitioner that the impugned order is a non speaking order. The impugned order is passed without assigning any reason for the rejection of the reply filed by the petitioner, resulting in violation of principles of natural justice.

6. At this juncture, the learned Additional Government Pleader would submit that the impugned order may be treated as show cause notice and the petitioner may approach the appropriate authority on 03.10.2024 at 11.00 A.M., along with supporting materials. The same is acceded to by the learned counsel for the petitioner.

7. In view thereof, the impugned order dated 30.07.2024 is set aside. The petitioner may be granted one final opportunity to appear before the respondent authorities along with supporting materials on 14.10.2024 at 11.00 A.M, to putforth his case. If the petitioner does not avail of the opportunity, the impugned order shall stand revived.

8. This Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:
1.The Commissioner of Commercial Taxes,
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2.The Assistant Commissioner (ST),
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MOHAMMED SHAFFIQ, J.

Nsr

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