BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.24110 of 2024
and
W.M.P.(MD).Nos.20392 and 20394 of 2024

M/s.Sri Kaleeswari Stores,
Represented by its Partner,
R.Venkateshwaran. ... Petitioner

Vs.

1.The Assistant Commissioner,
Kumbakonam Town Assessment Circle,
Kumbakonam.

2.The State Tax Officer (ST),
Thanjavur Assessment Circle,
Thanjavur. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the the orders of the 1st respondent in Form DRC-07 with Reference No.ZD330824137250P dated 16.08.2024 passed under Sections 61 and 73 of the TNGST Act, 2017 and quash the same as illegal, devoid of merits, erroneous and in violation of principles of natural justice.

For Petitioner : Mr.M.Varun Pandian
For Respondents : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the first respondent dated 16.08.2024 on the premise that the impugned order of assessment traverses beyond the show cause notice and also made without granting the petitioner an opportunity to place on record the documentary evidence in support of their objections/submissions/reply.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a partnership concern, engaged in sale of home appliance, vessels and utensils. The petitioner is registered under the GST Act bearing GSTIN No. 33ABZFS94475MIZW. For the period 2019-2020, the petitioner filed its returns and according to the petitioner, they discharged appropriate taxes. While so, an audit was conducted in the petitioner's place of business under Section 65 of the Act on 14.09.2023 and audit slips were issued pointing out the following defects, viz.,

a) Discrepancy between GSTR-2A and GSTR-3B,

b) Availment of ITC on discounts,

c) Charges disclosed in the profit and loss account not supported by documentary evidence,

d) Non-payment of tax under RCM in respect of certain supplies such as advertisement expenses, audit fees, repair and maintenance, vehicle maintenance, salary and wages, etc.,

e) Wrong availment of ITC on depreciation and

f) Non-filing of GSTR-9 and GSTR-9C.

Pursuant thereto, a show cause notice in Form GST DRC-01 dated 27.05.2024 was issued.

3. It is submitted by the learned counsel for the petitioner that in DRC-01 notice dated 27.05.2024, under the head/defect "GSTR 2A and GSTR 3B (ITC Discrepancies)", it only provided that there was excess ITC to the extent of Rs.97,010/- under the CGST and SGST Act respectively. The relevant portion is extracted hereunder:

PARTICULARS	IGST ITC	CGST ITC	SGST ITC
ITC as per GSTR 3B	0.00	56,55,576.56	56,55,576.56
ITC as per GSTR 2A	1400.65	55,58,566.53	55,58,566.53
ITC MISMATCH (GSTR3B- GSTR2A)	**-1400.65**	**97010.03**	**97010.03**

However, it was submitted that while passing the impugned order of adjudication, the entire ITC claimed during the period to the extent of Rs.56,55,576/- under the CGST and SGST Act respectively, in all amounting to Rs.1,13,11,152/-, has been disallowed, as could be seen from the following table:

In view of the above, the proposal is hereby confirmed as per Section 73 of the TNGST Act, 2017 and the summary is detailed below:

DEFECTNO.	***CGST***	***SGST***	***CGST***	***SGST***	***CGST***	***SGST***
1. GSTR2A vs GSTR3B	*5655576*	*5655576*	*Interest at 18% till the date of making payment*		*565558*	*565558*
3. discount received	*19396*	*19396*			*10000*	*10000*
4. finance charge	*919172*	*919172*			*91,918*	*91,918*
6. depreciation	*65,599*	*65,599*			*10000*	*10000*

It is submitted that the impugned order of adjudication traverses beyond the show cause notice and thus results in violation of principles of natural justice.

4. It was submitted that in respect of the other defects, the petitioner submitted its reply *inter alia* highlighting the following:

a)The proposal to disallow the ITC in respect of discounts is misconceived, inasmuch as discount itself is received only through credit notes, which were properly accounted and the ITC has also been adjusted.

b)In respect of finance charges, it was submitted that they do not fall within the purview of GST Act as they may not constitute taxable supply.

5. To the contrary, it is submitted by the learned Additional Government Pleader for the respondents that the impugned order is appealable and therefore, the Writ Petition ought not to be entertained.

6. Having considered the submissions made on both sides, this Court finds that insofar as the primary dispute, viz., discrepancy between GSTR-2A and GSTR-3B, which constitutes about 90% of the tax liability, there is merit in the submissions of the learned counsel for the petitioner that the same is made in violation of principles of natural justice, inasmuch as the impugned order of adjudication traverses beyond the show cause notice. It is trite law that show cause notice forms the foundation of the order and an order, which traverses beyond the show cause notice, results in violation of principles of natural justice inasmuch as the party is denied an opportunity to put forth his case.[1]

7. With regard to the other three issues, viz., denial of ITC on discounts, finance charges and depreciation, the impugned order proceeds on the basis that the reply filed by the petitioner is not supported by documentary evidence. The learned counsel for the petitioner would submit that the petitioner may be granted one final opportunity before the adjudicating authority to enable them to submit the relevant documentary evidence in support of their objection.

1CCE v. Champdany Industries Ltd., (2009) 9 SCC 466;
CCE v. GAIL, (2007) 15 SCC 91;
CCE v. Ballarpur Industries Ltd., (2007) 8 SCC 89

8. At this juncture, the learned Additional Government Pleader for the respondents would submit that the petitioner may deposit the tax liability, which has been arrived at in respect of the above three issues, viz., denial of ITC on discounts, finance charges and depreciation and that they would re-consider the petitioner's objections after affording reasonable opportunity of hearing, which was accepted by the learned counsel for the petitioner.

9. In view thereof, the impugned order is set aside. The petitioner shall deposit the tax liability in respect of other three issues, viz., denial of ITC on discounts, finance charges and depreciation, within a period of four (4) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections in respect of all the four issues, viz., discrepancy between GSTR-2A and GSTR-3B, denial of ITC on discounts, finance charges and depreciation, along with supporting documents/material, within a period of four (4) 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 respondents and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period,

i.e., four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

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

14.10.2024

Index : Yes / No
Internet : Yes/ No
Lm

To
1.The Assistant Commissioner,
Kumbakonam Town Assessment Circle,
Kumbakonam.

2.The State Tax Officer (ST),
Thanjavur Assessment Circle,
Thanjavur.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.24110 of 2024

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