



W.P.(MD).No.23670 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.23670 and 23677 of 2023

and

W.M.P.(MD).Nos.19842, 19849 of 2023, 8373 and 8374 of 2024

W.P.(MD).No.23670 of 2024

Tvl.Sripathi Paper and Boards Private Limited,
Represented by its Authorised Signatory,
Mr.R.Sudharsan.

... Petitioner

Vs.

Assistant Commissioner (ST),
Virudhunagar 3 Circle,
Commercial Taxes Building,
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 relating to the impugned rectification order in GSTIN/33AAGCS7439C1ZG/2018-19 dated 12.09.2023 issued by the respondent and to quash the same.

W.P.(MD).No.23677 of 2024

<https://www.mhc.tn.gov.in/judis>



W.P.(MD).No.23670 of 2024

Tvl.Sripathi Paper and Boards Private Limited,
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... Petitioner

Vs.

Assistant Commissioner (ST),
Virudhunagar 3 Circle,
Commercial Taxes Building,
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 relating to the impugned assessment order in GSTIN/33AAGCS7439C1ZG/2018-2019 dated 30.06.2023 issued by the respondent and to quash the same.

For Petitioner : Mr.Raghavan Ramabadran

For Respondent : Mr.R.Sureshkumar
Additional Government Pleader
(In both cases)

COMMON ORDER

The Writ Petitions are filed challenging the impugned order of assessment dated 30.06.2023 and the consequential order dated 12.09.2023 passed in the rectification petition filed by the petitioner.

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W.P.(MD).No.23670 of 2024

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2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of manufacture of paper, paperboard in India with focus on recycled grades and specializes in the manufacture of duplex boards, kraft paper, writing and printing papers. The petitioner is a dealer registered under the TNGST Act and filed its returns periodically by paying appropriate taxes. While so, on 18.08.2021, the petitioner was served with an Audit Note for audit of the financial years 2017-2018, 2018-2019 and 2019-2020 under TNGST Act. Subsequently, audit was transferred to Tirunelveli Circle and a revised audit notice in Form ADT-01 dated 04.10.2021 was issued to the petitioner by the Assistant Commissioner RAL, Tirunelveli Circle. Pursuant thereto, the audit team visited the petitioner's premises on various dates, namely, 20.01.2022, 21.01.2022, 24.01.2022, 28.01.2022, 01.02.2022 and 03.02.2022 respectively. On completion of audit on 03.02.2022, an audit summary report in A.R.No.1/2022 was issued to the petitioner.

3. It is submitted that the audit report pointed out several defects, in all 38 defects, relating to the assessment year 2018-2019. A detailed reply was filed by the petitioner before the Deputy Commissioner, Tirunelveli Circle in response to the audit summary report, while also requesting further time. The petitioner's request was rejected and final audit report in Form ADT-02 dated 22.02.2022 was issued to the petitioner confirming all the 38 defects mentioned in the audit summary report.



W.P.(MD).No.23670 of 2024

In the impugned order, reference was made to DRC-01A notice dated 11.03.2022 relating to the financial year 2018-2019. However, the petitioner was not served with the said notice.

4. Thereafter, show cause notice in Form GST DRC-01 dated 17.10.2022 was issued invoking Section 73 and 74 of the TNGST Act, wherein, the audit report was adopted and 38 defects were set out. A personal hearing notice dated 05.12.2022 was issued to the petitioner fixing the personal hearing on 14.12.2022 and the petitioner attended the personal hearing on 14.12.2022 and 26.12.2022. Thereafter, two more personal hearing notices dated 20.10.2023 and 26.01.2023 were issued to the petitioner fixing the personal hearing on 25.01.2023 and 09.02.2023 respectively. On 25.01.2023, the petitioner filed a detailed reply with documentary evidence in response to each of the defects/discrepancies pointed out in the notice as contained in the audit report. The respondent thereafter proceeded to pass the impugned order of assessment dated 30.06.2023, wherein, 31 out of the 38 defects were confirmed, which is the subject matter of challenge in the present Writ Petitions.

5. The impugned order of adjudication is challenged on the premise that the it has been passed without dealing with the petitioner's objections and without assigning any reasons for rejecting the detailed objection filed by petitioner, thus suffers from non-application of mind and also from the vice of being a non-speaking



W.P.(MD).No.23670 of 2024

order.

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6. In this regard, the learned counsel for the petitioner would point out two instances, which would indicate that the impugned order has been made in great haste and in gross non-application of mind to the material on record, which reads as follows:

(i) **Defect No.12:**

The claim of ITC made in the assessment year 2018-2019 was rejected on the premise that the same was blocked in the financial year 2017-2018. As regards the said defect, the petitioner had submitted a detailed objection stating that the ITC as per the audit financial statement was availed only by adding the credit of Rs. 5,98,79,346/- from the ITC received in the year 2017-2018, but availed in the year 2018-2019. It was also submitted that the audit pointed out that ITC booked in 2017-2018 but claimed in 2018-2019 by Rs.5,98,79,346.33/-. It was submitted by the petitioner in its reply that ITC amount has been taken in the books of account along with other ITC and declared in GSTR-9C Table 12B as Rs.5,98,79,346.33/-. The abstract for credit amount received in 2018-2019 was enclosed as evidence. It was thus submitted that there is no difference in ITC. The relevant portion of the objection filed by the petitioner is extracted hereunder:

"The department has raised the point of discrepancy of ITC of Rs.



W.P.(MD).No.23670 of 2024

59879346/- in taking the credit received in 2017-2018 but availed in 2018-2019 as detailed here under.

1. The ITC availed in 2018-2019 is		Rs.473779540.00
2. Less ITC booked in 2018-19		
But availed in 2019-20	(-)	Rs.102296461.00
		Rs.463483079.00
3. Add the ITC received in 2017-18		
But availed in 2018-19	(+)	Rs. 59879346.00
		Rs.523362425.00

Hence the ITC as per Audited Financial Statements as per Audited Financial Statements or book of accounts of Rs.523362425.00 has been availed only be adding in the credit of Rs.59879346.00 from the ITC received in 2017-18 but availed in 2018-19. Copies of GSTR-9 and GSTR-9C are enclosed for verification.

"Table -12-B of GSTR-9C for the FY 2018-19

Description	Input Tax Credit (Rs)
A. ITC availed as per audited Annual Financial Statement for the State/UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)	533658886.43
B. ITC booked in earlier Financial Year-2017-18 claimed in current Financial Year-2018-19 (+)	0
C. ITC booked in current Financial Year to be claimed in subsequent Financial Years (-)	10296461
D. ITC availed as per audited financial statements or books of account	523362425.43



W.P.(MD).No.23670 of 2024

E. ITC claimed in Annual Return (GSTR9)	562557562.27
F. Un-reconciled ITC	39195136.84

12C. ITC booked in current Financial Year 2017-18 to be claimed in subsequent Financial Years (2018-19)	GSTR-9C-2017-18	5,98,79,346.33
12B. ITC booked in earlier Financial Year 2017-18 claimed in current Financial Year-2018-19	GSTR-9C-2018-19	0
Discrepancy		5,98,79,346.33

From the above it is proved that availed ITC of Rs.533658886.43 as per Audited Financial Statement for the year 2018-19. ITC booked in 2018-19 but availed in 2019-20 is not available in 2018-19 so that value of Rs.10296461/- is subtracted and added with ITC received in 2017-18, but availed in 2018-19 ITC of Rs. 583241771/- which availed ITC in 2018-19. The following table showing the excess availing ITC during 2018-19.

Sl.No	Particulars	ITC VALUE
1	ITC availed in 2018-2019	533658886
2	<u>LESS:</u> ITC booked in 2018-19, But availed in 2019-20	10296461



W.P.(MD).No.23670 of 2024

3	TOTAL	523362425
4	Add the ITC received in 2017-18, But availed in 2018-19	59879346
5	TOTAL	583241771
6	<u>LESS:</u> ITC availed as per audited financial statements	523362425
7	Discrepancy	59879346

It is submitted that the petitioner made the claim of ITC as per the audited financial statement, shown in Column A, however, in Column B, the petitioner had inadvertently stated it to be 'nil'. The petitioner had explained the said discrepancy in its detailed objections. However, the entire objection was rejected by the respondent by merely stating as follows:

"The objection filed by the dealer not convincing and are not acceptable. Hence, the notice already issued proposing to levy tax of Rs.5,98,79,346 is hereby ordered to be confirmed."

(ii) Defect No.27:

By referring to Defect No.27, it was pointed out that the same related to ITC availed in electronic credit ledger, where there was difference between GSTR-3B, GSTR-2A and GSTR-9. Detailed objections were filed by the petitioner. The relevant portion is extracted hereunder:

"The department has raised the point that the tax payer has availed excess credit of



W.P.(MD).No.23670 of 2024

CGST Rs.17751938/- SGST Rs.17751938/- & IGST Rs.11364129/- in GSTR-3B than the credit reflecting/available in GSTR-2A as per Table 8A of GSTR-9. We have availed the credit as per the ITC register maintained based on the Tax invoices availing ITC as per the provisions of section 16 of CGST/TNGST Act 2017.

On verification of accounts it is ascertained that the ITC taken as per the Books and records are as under after deducting the ITC on import of goods, ITC of tax paid under RCM, and ITC of 2017-18 taken in 2018-19.

Particulars of ITC	IGST	CGST	SGST
Total ITC as per Books 18-19	205994959.15	137381712.94	137381712.94
Less import	92117352.50	-	-
Less RCM	-	3243404.53	3243404.53
Less ITC of 17-18 taken in 18-19	13270595.39	9839217.47	9839217.47
Net ITC for 18-19	100607011.26	124299090.94	124299090.94
Table 8A of GSTR-9	104601290.00	120052059.00	120052059.00
Difference	-3994278.74	4247031.94	4247031.94

From the above it can be seen the difference amount of ITC is not as raised by the department available 16 in the defect note. The work sheet for availing ITC as per



W.P.(MD).No.23670 of 2024

credit available in ITC register and as per Audit Para are attached herewith for reference.

The above credit of ITC based on books were taken under section 16(2) on the basis of tax invoices received along with goods and services. If the tax invoices are not reflecting in the GSTR-2A, due to fault of suppliers, the same cannot be restricted during the period 2018-19. In this connection, it is submitted that the restriction to take credit in GSTR-3B, with reference to credit reflecting in GSTR-2A, has been introduced only with effect from 9/10/2019 vide Noti. No. 49/2019-CT dated 9/10/2019 and therefore the restriction is not applicable during the material period 2018-19.

From 9/10/2019 to 31/12/2019 we can take credit 20% of credit that is reflecting in GSTR-2A based on documents as per the provisions of rule 36 of CGST/TNCST Rules 2017. With effect from January 2020, we can take credit of 10% of credit available in GSTR-2A based on documents vide Noti. No. 75/2019-CT dated 26/12/2019. As the tax period involved in the notice is 2018-19, this restriction is not applicable to the instant case. We submit that the ITC can be taken on the basis of invoices received for purchase of goods and services on the basis of documents under section 16 CGST Act 2017.

Hence the point raised that the ITC has to be availed to the extent as reflecting in



W.P.(MD).No.23670 of 2024

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GSTR-2A is without any authority of law during the material period. Since the credit has been taken based on tax invoice documents as prescribed under section 16 of CGST Act 2017, the same are eligible under section 16 ibid for ITC.

We submit that the ITC can be taken on the basis of invoices received for purchase of goods and services on the basis of documents under section 16 TNGST/CGST Act 2017. In this connection we rely on the Judgment dated 13/12/2021 of Honorable Calcutta High Court in WPA No.23672 of 2019 in the case of M/s LGW Industries & others Vs Union of India & others as reported in 2021-VIL 868-Cal wherein it has been held that the ITC has to be allowed on the basis of documents and not on the basis of ITC available under GSTR-2A. In this connection we also rely on the Honorable Madras High Court judgment in the case of D.Y.Beathel Enterprises Vs State Tax Officer (Data cell) Tirunelveli, as reported in 2022 (58) GSTL 269 (Mad) which is a jurisdictional High Court judgment binding on the CGST Officers. We also rely on the Honorable Jurisdictional High Court of Madras in the case of Inko Chemical India Pvt Ltd. Vs Commercial Tax Officer reported in 2018(15) GSTL 523 (Mad) where it has been held that non-disclosure of particulars in monthly return by selling dealer cannot be cause to seek tax or reversal of ITC from purchasing dealer. We also rely on the case of Honorable Kerala High Court Judgment in the case of St. Joseph Tea



W.P.(MD).No.23670 of 2024

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Co. Ltd. vs State Tax Officer 2021 (52) GSTL 395 (Ker) and the Honorable Supreme Court Judgment in the case of Union of India Vs Bharati Airtel Ltd. 2021(54) GSTL257 (SC). In this judgment the Honorable Supreme Court has held that GST is a self-assessment tax system based on document and that GSTR-2A is only for the purpose of facilitation to the tax payer and not the sole document based upon which ITC can be claimed. It is only the documents, records and conditions prescribed in the CGST Act 2017 based upon which, the ITC can be claimed. Therefore the Supreme Court has clarified that the ITC cannot be made dependent upon the GSTR-2A or GSTR-2B. These judgments are binding on the Departments to maintain judicial discipline as held by the Honorable Supreme court in the case of UOI Vs Kamalakshi Finance Corporation Ltd. 1991 (55) ELT 433 (SC) and as per Article 141 of Constitution of India.

As purchase documents such as Tax invoice are available for the credit amount, we are rightly eligible for taking ITC. As such no credit is reversible or payable as raised by the department. A work sheet showing the ITC availed in 2018-19 detailing the ITC for 2018-19 taken in 2019-20, the ITC of 2017-18 taken in 2018-19, reducing the import ITC and RCM ITC and Net ITC is submitted herewith."



W.P.(MD).No.23670 of 2024

The same was again rejected by merely stating as follows:

“Objections filed, by the taxable person are not convincing and are not acceptable, since they are not supported by valid documentary evidences of ITC claiming register/statement as stated in the reply.”

It is submitted that while Defect No.27 represented a sum of Rs.4,68,68,005/-, the impugned order contains three different figures, as seen from page 239 of the typed set of papers. It is stated that the petitioner had availed ITC to the extent of Rs.11,32,128/-, although this tax has not been discharged by its supplier. In the very same page, there is another figure, wherein, ITC disallowed was shown as Rs.82,60,354/-. However, in the final portion of the order, wherein, the entire tax liability is determined, it shows that ITC is disallowed to the extent of Rs.4,68,68,005/-. It is submitted by the learned counsel for the petitioner that the sum of Rs.11,32,128/- relates to Defect No.12 and the same has been adopted while dealing with Defect No.27, which clearly demonstrates that there has been gross non-application of mind to the facts and material on record.

7. The learned counsel for the petitioner would submit that the above infirmities are only illustrative and that the objections in respect of all the defects have been rejected in one line, although the petitioner has filed a detailed objection along with annexures running to more than 60 pages.



W.P.(MD).No.23670 of 2024

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8. At this juncture, the learned Additional Government Pleader appearing for the respondent would submit that the respondent would re-do the entire assessment.

9. In view thereof, the impugned order of assessment dated 30.06.2023 is set aside and the Writ Petition in W.P.(MD).No.23677 of 2023 stands disposed of. The impugned order of assessment shall be treated as a show cause notice. The petitioner shall appear before the respondent on 03.10.2024 at 11.00 AM and submit their objections along with relevant documentary evidence. If any such objections are filed, the respondent shall consider the same and pass a speaking order in accordance with law after affording an opportunity of reasonable hearing to the petitioner.

10. As regards the Writ Petition in W.P.(MD).No.23670 of 2023 challenging the order passed in the rectification petition filed by the petitioner, it was submitted by both the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondent that in view of the fact that the impugned order of assessment dated 30.06.2023 is now being set aside, nothing survives for adjudication in the said Writ Petition. Recording the same, the Writ Petition in W.P.(MD).No.23670 of 2023 stands closed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.



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W.P.(MD).No.23670 of 2024

Sd/-

Assistant Registrar (C.S.II)

// True Copy //

/10/2024

Sub Assistant Registrar
(CS - I, II, III, IV)

Lm

To

Assistant Commissioner (ST),
Virudhunagar 3 Circle,
Commercial Taxes Building,
NH 07 Madurai Road,
Virudhunagar - 1.

+1 CC to M/s.LAKSHMI KUMARAN AND SRIDHARAN, Advocate (SR-49792[F]
dated 06/09/2024)

+1CC to M/s.SPL.GP (SR[F] - 50181, dated 09.09.2024)

**W.P.(MD).Nos.23670 and 23677 of 2023
05.09.2024**

SL(03.10.2024)/ 15P/ 4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.