IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.13839 of 2025
and
W.M.P.Nos.15544 & 15545 of 2025

Tvl.Sekar Sowndarya ...Petitioner

Vs.

The State Tax Officer
Office of Commercial Tax Officer,
Park Road Assessment Circle,
Erode, Tamil Nadu-600 123.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent herein in its Impugned Order passed by the Respondent in GSTIN:33HBAPS6139E1ZN/2020-2021 dated 21.10.2024 along with the Form DRC-2020-2021, and quash the same.

For Petitioner : Ms.R.Hemalatha
For Respondent : Mrs.K.Vasanthamala
Government Advocate (Tax)

ORDER

Mrs.K.Vasanthamala, learned Government Advocate (Taxes), who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order dated 21.10.2024 passed by the respondent for the AY 2020-21 and to quash the same.

3. The learned counsel for the petitioner would submit that the respondent has issued a show cause notice on 18.09.2024 followed by personal hearing notice dated 09.10.2024 to the petitioner. Since, the petitioner failed to file reply to the said show cause notice, the respondent has confirmed the proposals contained in the show cause notice and passed the present impugned order. Further, he would submit that since the allegation in the show cause notice is with regard to ITC mismatch, which is mainly due to non filing of returns by the supplier, the petitioner cannot be held liable. That apart, for the discrepancies to delay on the part of the suppliers should not penalize the recipient. Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside.

3.1. It is also submitted by the learned counsel for the petitioner that the petitioner is ready and willing to deposit 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and remand the matter back to the Authority for fresh consideration. He would further submit that there is bank attachment and the same may be lifted, subject to the payment of 25% of the disputed tax. Hence, he prayed for appropriate directions.

4. The learned Government Advocate (Taxes) for the respondent fairly submitted that since the petitioner has voluntarily come forward to deposit 25% of the disputed tax, the prayer sought for by the petitioner may be considered.

5. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, this Court is of the view that the respondent is duty bound to verify the ITC related issues before passing the assessment order. But the respondent has failed to do so.

7. Taking notice of the same and since the petitioner is ready and willing to deposit 25% of the disputed tax, this Court is inclined to set-aside the impugned order with terms, by issuing the following directions:-

i) The impugned order passed by the respondent dated 21.10.2024 is set aside.

ii) Consequently, the matter is remanded to the respondent for fresh consideration.

iii) The petitioner is granted liberty to deposit 25% of the disputed tax, which the petitioner themselves had voluntarily came forward to make such payment, within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks.

v) Thereupon, the first respondent is directed to consider the reply and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

vi) Upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, the first respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith.

8. With the above observations & directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.04.2025

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Index : yes/no
Neutral Citation : yes/no

To

1. The State Tax Officer,
   Sholinganallur Assessment Circle,
   No.240, 2nd Floor,
   Integrated Commercial Taxes and Registration Building,
   Government Farm Village,
   Nandhanam, Chennai 600 035.

2. The Bank Manager,
   Kotak Mahindra Bank,
   Perungudi Branch,
   14, OMR Road,
   Kandanchavadi, Perungudi,
   Chennai 600 096.

Krishnan Ramasamy,J.,

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