IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.07.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.14755 of 2025
and
W.M.P.No.16653 of 2025 check

Tvl. Sekar & Co.
Rep. by its Proprietor, Chandrasekaran Kannan
...Petitioner

Vs.

The State Tax Officer,
Intelligence, Office of Commercial Tax Officer,
Salem – 636 007. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent in the impugned order bearing Ref.No.33CJZPK0548M1ZK/2017-18 dated 14.12.2023 and consequential order in DRC-07 bearing No.ZD331223102775R dated 14.12.2023 for the tax period July 2017 to March, 2018 and to quash the same as being contrary to the provisions of CGST Act, 2017 and further, to direct the respondent to enable the petitioner to rectify the human error in the details uploaded in Form GSTR-3B and GSTR-1 for the tax period 2017-18.

For Petitioner : Mr.K.Vignesh Kumar

For Respondent : Mr.C.Harsha Raj,
Special Government Pleader (T)

Order

The challenge in this Writ Petition is to the order passed by the respondent dated 14.12.2023 and consequential order in DRC-07 dated 14.12.2023 for the tax period July 2017 to March, 2018 and to quash the same and further, to direct the respondent to enable the petitioner to rectify the human error in the details uploaded in Form GSTR-3B and GSTR-1 for the tax period 2017-18.

2. Mr.K.Vignesh Kumar, learned counsel appearing for the petitioner would submit that a show cause notice in DRC-01 dated 29.09.2023 was issued to the petitioner, proposing tax liability to the tune of Rs.2,19,46,262/-; that though the petitioner filed a detailed reply to the show cause notice vide GST DRC-6 dated 12.12.2023, the respondent passed the impugned order, without properly perusing the documents filed in support of the reply; that though the petitioner, on receipt of the impugned order, filed a Rectification Petition on 13.03.2024, to consider the error apparent on record, however, the said Petition was rejected as not maintainable on 27.02.2025, and therefore, the petitioner, having left with no effective alternative remedy, has filed this Writ Petition seeking to quash the impugned order.

2.1 It is the contention of the learned counsel for the petitioner that the impugned order passed by the respondent by invoking provisions of Section 74 of the TNGST Act is arbitrary, for, for invoking the said provisions, there should be an allegation of suppression, mala fide intention, fraud or misrepresentation on facts on the part of the petitioner, and in the present case, though the petitioner was in possession of necessary documents to prove that there was no suppression/misrepresentation of facts, the respondent without appreciating the documents filed in support of the reply, proceeded to confirm the proposals contained in the show cause notice in a mechanical manner and hence, the same is liable to be quashed.

3. Per contra, Mr.C.Harsha Raj, learned Special Government Pleader for the respondent would submit that the petitioner was called upon to file their objections along with documentary evidence and was provided with opportunities of personal hearing on three occasions, i.e. on 25.10.2023, 27.09.2023 and 27.11.2023, to appear before the respondent and putforth their case and just two days prior to the passing of the impugned order, reply was filed by the petitioner, thereby, accepting the erroneous claim of ITC without actual receipt of goods and services, which, according to the petitioner, was on account of erroneous maintenance of accounts by his Accountant, since such aversion is not supported with documents and moreover, the petitioner also failed to appear for personal hearing despite provision of three opportunities, the respondent passed the impugned order confirming the excess claim of ITC and the same calls for no interference.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader for respondent and perused the materials placed on record.

5. The petitioner is a registered taxpayer on the files of the respondent under the provisions of the TNGST Act, 2017. For the AY 2017-18, the petitioner has filed returns and statement without fail. The petitioner's place of business was inspected by the respondent-Officials and in line with the same, the respondent issued a notice in DRC-01A dated 12.09.2023 pointing out certain discrepancies, which was subsequently followed a show cause notice in DRC-01 dated 29.09.2023, thereby, proposing tax liability of Rs.2,19,46,262/-. The petitioner filed a reply along with relevant documents to the said show cause notice. Thereafter, the impugned order came to be passed against the petitioner.

5.1 Though it is contention of the learned counsel for the petitioner that the discrepancies pointed in the show cause notice is primarily on account of erroneous maintenance of accounts by the Accountant, which, in turn, resulted in wrong depiction of sales turnover and excess claim of ITC, when the petitioner vide show cause notice dated 29.09.2023 was called upon to file their objections along with documentary evidence within 30 days' time and provided with opportunities of personal hearing on three occasions, i.e. on 25.10.2023, 27.09.2023 and 27.11.2023, to appear before the respondent and putforth their case, the petitioner ought to have filed their objections within the prescribed time limit, whereas, the petitioner remained a mute spectator for two months and just two days before when the impugned order has been passed, he filed the reply i.e. 12.12.2023. However, the said reply was considered by the respondent and since in the said reply, the petitioner, himself, has accepted the erroneous claim of ITC was without actual receipt of goods and services, and though the said human error, according to the petitioner, was on account of erroneous maintenance of accounts by his Accountant, since such aversion is not supported with documents, the impugned order has been passed.

5.2 That apart, the respondent in order to give fair opportunity to the petitioner to putforth his case, provided notice of personal hearing on three occasions, and the petitioner has failed to utilize none of such opportunities. If really it had been the grievance of the petitioner that the excess claim of ITC was owing to the mistake committed by his Accountant in erroneous maintenance of accounts, the petitioner, to show their bona fide, ought to have filed the reply along with necessary proof/document in support of their claim, in time and appeared for the personal hearing, in which case. the respondent, being convinced with the said reply and documents, coupled with the submission made in person, would have dropped the proceedings, in the absence of doing so, the impugned order has been passed. Even assuming that the petitioner was not in a position to appear, either he ought to sent his any Authorized Representative to argue on his behalf or should have sought for time, and in the absence of any such attempt being made by the petitioner, the respondent cannot be found fault with, and this Court do not find any reasons to believe that there was bona fide on the part of the petitioner so as to interfere with the impugned order.

5.3 Though it is the contention of the petitioner that the reply filed by the petitioner was not appreciated in a proper perspective, and that the respondent is at fault, the petitioner ought to have either approached the Appellate Authority challenging the order dated 14.12.2023 by way of an Appeal or should have approached this Court challenging the order dated 14.08.2024 by way of a Writ Petition in time and it is seen from the EB of this Writ Petition, the Writ Petition itself was filed only on 20.04.2025, i.e.

after a lapse of 16 months. Now, at this distance point of time, this Court cannot even relegate the petitioner to avail such appellate remedy, as the same would hit by law of limitation. Though it is case of the petitioner that the petitioner has filed a Rectification Petition before the respondent on 13.03.2024 and the same was kept pending nearly a year and was rejected only on 27.02.2025, that cannot be a ground for the petitioner for having not approached this Court in time, inasmuch as, during the pendency of such Rectification Petition itself, the petitioner ought to have exhausted the alternative remedy of either approaching the Appellate Authority in time or this Court as bypass remedy. Further, this Court would like to point out that, though the petitioner cites the pendency of the Rectification Petition for nearly one year before the respondent was the reason for the delay in approaching this Court challenging the assessment order, had the petitioner filed all relevant documents during the process of rectification proceedings, the respondent, on being convinced with the same, would have passed any orders favouring the petitioner, but, it appears that even in the Rectification Petition, the petitioner failed to produced relevant documents, and since the same is not supported with relevant documents/proofs, the respondent vide order dated 27.02.2025 refused to entertain the same by holding that in the absence of proof of documents/records, the Rectification Application filed by the petitioner will not be accepted.

5.4 Therefore, this Court is of the view that the petitioner, on his own, has invited the impugned order, for which, this Court cannot help him by setting aside the impugned order.

6. In the result, the Writ Petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2025

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Index : yes/no
Neutral Citation : yes/no

To
The State Tax Officer,
Intelligence, Office of Commercial Tax Officer,
Salem – 636 007.

Krishnan Ramasamy,J.,

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W.P.No.14755 of 2025

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