



W.A.MD) No.977 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 15.04.2025

Delivered on: 24.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.977 of 2025

and

C.M.P(MD)No.6194 of 2025

M/s.Nikitha Traders
Represented by its Proprietor
Mr.Praveen Kumar Jain
S/o.Roop Chad Jain
12A, Sayakara Lane Alias Pandiya Nadar Lane
Chitrakara Street,
Madurai-625 001.

... Appellant/ Petitioner

-Vs-

The Superintendent of CGST and Centra Excise
South Range-I
No.5, V.P.Rathinasamy Road,
Bibikulam,
Madurai-625 002.

...Respondent/Respondent

PRAYER: Writ Appeal filed under Clause XV of Letters Patent, against the order dated 11.03.2025 made in W.P(MD)No.6487 of 2025 passed by this Court.

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For Appellant : M/s.Vishnu Priya

For Respondent : Mr.R.Gowri Shankar
Sr.St.Counsel

JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

S.SRIMATHY, J.

M/s Nikitha Traders, a proprietary concern is the appellant herein. Being aggrieved by the order of the respondent herein, the writ petition is filed seeking a writ of certiorari and the same got dismissed. Hence, the intra court appeal.

2.The case of the appellant is that, for the period between April 2020 to March 2021, the assessment order in original No.MAD-GST-SUP-13/2025/SUPDT (South Range), dated 28.01.2025 passed by the Superintendent of CGST and Central Excise, South Range-1, Madurai,

a) confirmed the demand of Rs.13,24,403/- being the difference between Input Tax Credit (ITC) availed in GSTR -3B and ITC available as per GSTR – 2A and appropriated a sum of Rs.17,382/-.

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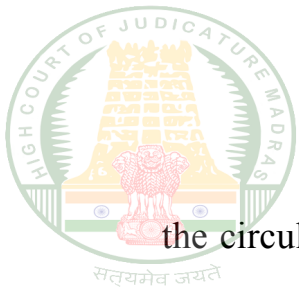
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b) confirmed the demand of interest for excess availment of ITC for the relevant period and appropriated a sum of Rs.12,255/- and

c) imposed penalty of Rs.1,30,702/- for the commission of the offence under Section 122(2)(a) r/w Section 73(9) of CGST /TNGST Act 2017 and Section 20 of IGST Act, 2017. Following the assessment Order, the summary of the order in Form GST DRC - 07 issued on 29.01.2025. These two orders are impugned in the writ petition seeking certiorari.

3.The Learned Single Judge, after perusing the orders impugned, pointing out that Section 107 of the CGST Act provides right of appeal before the Joint Commissioner of GST and CE (Appeals), dismissed the writ petition granting liberty to the writ petitioner to approach the appellate authority and raise all the grounds raised in the Writ Petition and get redressed. Further, the learned single Judge also directed the appellate authority to entertain the appeal if filed within two weeks from the date of the order. To consider the appeal in accordance with law and dispose it within a period of 3 months thereafter.

4.The learned Counsel for the appellant canvassed before this Court that, the assessment order and the order imposing penalty was not in accordance with



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the circulars of the Department and the judgments of the Hon'ble Supreme Court and High Court. The circulars and the judgments says, the assessment of ITC in case of wrong filing of GSTR I and wrong claiming of ITC amount, is error rectifiable. While so, in spite of explaining the reason for mismatching in ITC through the reply dated 13.12.2024 along with documents, the respondent herein had passed order, without affording opportunity to rectify.

5.In support of the said argument, the learned Counsel had relied upon the judgment of this Court in WP(MD)No.6459 of 2024 in ***TVI. Thendral Electricals –vs- The Commissioner of Commercial Taxes, Dindigul : 2024 (9) TMI 1472 MHC*** and the order in SLP(civil) Dairy No.6332 of 2025 dated 21.03.2025 in Central Board of Direct Taxes and Customs –vs- M/s Aberdare Technologies Pvt Ltd and Others.

6.In the light of the judgments referred, the perusal of the assessment order, we find that the reply of the assessee / the appellant herein been considered and found neither the judgments relied by him is applicable to his case nor the contention that the mismatch was due to payment under different head wrongly is correct. The respondent herein, after discussing the law and the facts of the case, at paragraph 10 of the order, had assigned reason for not accepting the explanation



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given. In the order, the assessee is informed about the right of appeal available to him under the statute.

7.While so, when alternate efficacious remedy provided under the statute, the appellant, without availing the remedy under the statute by filing the appeal after deposit of 10% of the duty and penalty demanded, to circumvent the condition, had approached the High Court invoking the writ jurisdiction.

8.We also find that, the statute provides for rectifying the defective or erroneous filing of return under wrong provision/ Form. The appellant had not come forward either prior to the show cause notice or after it or during the detailed scrutiny of his account to rectify the account. Only after the issuance of Show Cause Notice, taking cue from the judgment of the High Court and the circulars issued regarding limitation for rectification, a defence of wrong payment and withdrawal is put forth. Even now, the appellant is not left without remedy. The Learned Single Judge has preserved his right of appeal and the grounds of appeal to be tested before the Appellate Authority.

9.Therefore, we find no reason to interfere in the order of the learned single Judge passed in W.P(MD)No.6457 of 2025, dated 11.03.2025. Hence, the writ



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appeal stands dismissed. The time to file statutory appeal is extended by 15 days.

No costs. Consequently, the connected miscellaneous petition is also closed.

[G.J., J.] & [S.S.Y., J.]

24.04.2025

NCC : Yes / No

Index : Yes / No

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To

The Superintendent of CGST and Centra Excise

South Range-I

No.5, V.P.Rathinasamy Road,

Bibikulam,

Madurai-625 002.



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DR.G.JAYACHANDRAN, J.

AND

S.SRIMATHY, J.

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Pre-delivery Judgment made in
W.A(MD)No.977 of 2025
and
C.M.P(MD)No.6194 of 2025

24.04.2025