



W.P.No.16474 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.07.2025

Coram

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.16474 of 2024

and

W.M.P.Nos.18033 & 18034 of 2024

M/s.JIT Auto Comp,
Rep. by its Managing Partner
K.Velmurugan,
E-19, Sipcot Industrial Complex,
SIPCOT Phase-II, Hosur,
Tamil Nadu - 635 109.

...Petitioner

Vs.

Assistant Commissioner,
Hosur Division II,
Office of GST and Central Tax,
SIPCOT, Hosur - 635 126.

...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, culminating to order dated 18.03.2024 bearing OIO No.02/2024 GST (AC) and quash the same.

For Petitioner : Ms.Aparna Nandakumar
for M/s.Adithya Reddy

For Respondent : Mr.Rajnish Pathiyil
Special Panel Counsel



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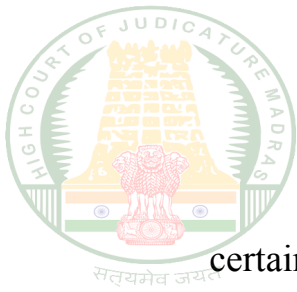
ORDER

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This Writ Petition has been filed by the petitioner to quash the impugned order dated 18.03.2024 passed by the respondent.

2. The learned counsel for the petitioner would submit that in the present case, notice was issued under Section 74 of the CGST Act, 2017, for the differences in the GSTR-3A and GSTR-3B. She would further submit that the petitioner filed a detailed reply on 22.12.2022 with regard to their inability to file the certificate from the Chartered Accountant, since the supplier went into liquidation. Thereafter, the petitioner obtained the certificate from their Chartered Accountant and filed the same, but however, the said document was not taken into consideration and the impugned assessment order was passed.

3. In the present case, notice was issued under Section 74, the petitioner categorically stated that there is no false representation or fraud has been played and there is no dispute with regard to the petitioner's supplier went into liquidation. When the supplier went into liquidation



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certainly the petitioner was not in a position to get a certificate and in this case, the petitioner obtained a certificate from their Chartered Accountant and filed the same in order to justify their case.

4. It is also submitted by the learned counsel for the petitioner that the petitioner is ready and willing to deposit the entire disputed tax amount of Rs.81,12,876/-, in the event, this Court is inclined to set aside the impugned order and remand the matter back to the Authority for fresh consideration and consider the notice issued under Section 74 as Section 73 of the CGST Act. Hence, she prayed for appropriate directions.

5. Per contra, the learned Special Panel Counsel for the respondent would submit that since supporting documents were not filed, proceedings were initiated under Section 74. Therefore, it is justified in invoking Section 74 and proper reasons have also been assigned in para 5 of the impugned order, which states as follows:-

“5. Invocation of section 74 of the cgst act 2017: -

5.1. In this case, the taxpayer has availed excess input tax credit through the monthly returns filed in form GSTR-3B for the period from July 2017



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to March 2020. Further, in response to the letters of the department, they failed to furnish the reason for the differences between the input tax available in GSTR-2A and the input tax availed in the GSTR-3B filed by them for above said period by enclosing the documentary evidences. Thus, it appears that the taxpayer has fraudulently availed ITC without actual receipt of goods or services and willfully falsified their returns in order to avail the ITC for utilizing the same for their outward supplies.

5.2. It is evident from the facts of the case that the issue has been unearthed consequent to the audit of their book of account by the officers attached to Salem Audit Circle but for the audit, the entire issue would have gone un-noticed causing huge loss of revenue to the exchequer. In the scheme of things in self-assessment, considerable faith is placed on the taxpayer and the taxpayer ought to have self-assessed the tax payable by him and truthfully disclose the same in the statutory returns filed with the department. The taxpayer has not received any goods or services in respect of excess input tax credit and declared the same in monthly return uploaded in GSTN. Thus, they have falsely declared the inward supplies in the returns order to utilize the undue ITC fraudulently for the outward supplies. Hence, it appears that penal provisions are invocable in terms of Section 122 of the CGST Act, 2017.”

6. Therefore, the learned Special Panel Counsel for the respondent prays that appropriate orders may be passed accordingly.



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7. Considering the submissions made on either side, in the present case, there is no dispute on the aspect that the petitioner's supplier went into liquidation and in that situation, the petitioner expresses their difficulties in getting the certificate from the Chartered Accountant, however the petitioner obtained the certificate from their Chartered Accountant and filed the same in order to prove their case.

8. Merely for not furnishing the Chartered Accountant's Certificate, the proceedings were initiated under Section 74. Ultimately, Circular No.183/15/2022-GST dated 27.12.2022 was issued in order to ensure that the supplier has remitted the amount with regard to the supply of goods, which is nothing but just for verification of the transaction. On the other hand, even without following the said Circular, the respondent can, independently, verify any particular transaction and all the other issues raised in the show cause notice. In this case, the petitioner had expressed their inability to produce a Chartered Accountant Certificate from their supplier, however, they had produced a certificate from their Chartered Accountant, whereby they confirmed the supplies effected, goods received



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and payment made along with GST. When such certificate is produced by the petitioner, the respondent is supposed to have applied his mind and arrived at a wise conclusion after verifying all the transaction along with the relevant documents. However, to the shock of this Court, no such decision was arrived at by the respondent. Further, no findings were rendered with regard to the aforesaid Chartered Accountant certificate produced by the petitioner. Therefore, it is clear that the respondent had arrived at a conclusion in a mechanical manner and passed the impugned order under Section 74 of the GST Act. In such view of the matter, this Court feels that the said impugned order is not sustainable in law and the same is liable to be set aside. Further, this Court is inclined to remit this matter back to the respondent by directing the respondent to consider the present matter as a proceedings initiated under Section 73 of GST Act and dealt with the same in accordance with law.

9. Considering the facts and circumstances of the case, this Court feels that it is appropriate to set aside the impugned assessment order. Accordingly, the impugned order passed by the respondent dated 18.03.2024 is set aside and the matter is remanded to the respondent for



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fresh consideration, in which case the respondent is directed to consider the notice issued under Section 74 as Section 73 of the CGST Act and proceed to pass appropriate orders accordingly. This order will take effect in the event the petitioner remits the entire disputed tax amount of Rs.81,12,876/- [Rupees Eighty One Lakhs Twelve Thousand Eight Hundred and Seventy Six only] within a period of two weeks from the date of receipt of a copy of this order.

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

08.07.2025

Speaking order

Index : Yes

Neutral Citation : Yes

Note: Issue Order Copy on 10.07.2025

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To
The Assistant Commissioner,
Hosur Division II,
Office of GST and Central Tax,
SIPCOT, Hosur - 635 126.



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KRISHNAN RAMASAMY, J.,

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