IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.1447, 1452, 1465, 1470, 1475 & 1482 of 2024
and W.M.P.Nos.1470, 1472, 1476, 1478, 1485, 1487,
1490, 1491, 1493, 1494, 1498 & 1499 of 2024

Tvl. Sakthi Ganesh Textiles Private Limited,
Represented by its Executive Director Mr.G.Parthiban,
617/3, Ayyeepalayam, Siruvalur Post,
Gopichettipalayam - 638 054. ... Petitioner in all WPs

-vs-

The Assistant Commissioner (State Tax),
Gopichettipalayam Circle, Gopichettipalayam,
Erode - 638 052. ... Respondent in all WPs

PRAYER in W.P.No.1447 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records pertaining to the impugned order ZD3310230286013 dated 06.10.2023, issued by the respondent and quash the same.

In all WPs:

For Petitioner : Mr.G.Derrick Sam

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

COMMON ORDER

In these writ petitions, separate assessment orders dated 06.10.2023 pertaining to distinct periods are assailed. The writ petitioner had previously filed writ petitions challenging the assessment process for violation of principles of natural justice. The said writ petitions were disposed of by order dated 05.05.2023 in W.P.No.14708 of 2023 and connected petitions by quashing the impugned orders and remanding the matter to the respondents for issuance of speaking orders after considering the reply of the petitioner to the respective show cause notices. The impugned orders were issued pursuant to such order.

2. Learned counsel for the petitioner challenges the orders impugned herein on three grounds. The first ground of challenge is that the petitioner was called upon to show cause as to why the sum specified in the respective show cause notice was not liable to be paid by the petitioner. The orders impugned conclude that a higher sum was liable to be paid by the petitioner as tax in the respective periods. In order to substantiate this contention, learned counsel referred to the show cause notice at Page No.57 of the typed

set in W.P.No.1447 of 2023 and invited me to compare the same with the impugned order at Page No.36 of the typed set of the said writ petition. The second ground of challenge was limited to W.P.No.1447 of 2024. By referring to Defect No.3 which pertains to transitional credit eligibility, learned counsel pointed out that a finding was recorded that the petitioner had not submitted requisite documents, whereas the petitioner had explained that Form 1 return for the month of June under the Tamil Nadu Value Added Tax Act, 2006 had been filed and that copies of the said documents were enclosed with such reply. The third ground of challenge was on the basis that the petitioner was not provided copies of documents, such as the report of the intelligence wing and statements of third parties and was not permitted to cross examine the parties who authored such reports or provided such statements.

3. In support of the contention that the denial of the right of cross examination warrants interference, learned counsel relied on the judgment of this Court in *Thilagarathinam Match Works v. Commissioner of C.Ex., Tirunelveli (Thilagarathinam Match Works), 2013 (295) E.L.T. 195(Mad)*,

particularly paragraph No.9 thereof. For the same proposition, he also relied upon the judgment of this Court in *M/s.Visal Lubetech Corporation, Rep. by its Proprietor R.Parivallal, P.Karthikeyan v. The Additional Commissioner of Central Customs, Coimbatore, 2017 (2) TMI 1524.* He also relied on the judgment of this Court in *M/s.The Chennai Silks v. The Assistant Commercial (ST) (FAC), Tirupur South Assessment Circle, Tirupur, 2023(11) TMI 205 f*or the proposition that interference by this Court under Article 226 of the Constitution of India would be warranted, if the impugned order was issued without considering the submissions and documents submitted by the assessee.

4. Mr.C.Harsha Raj, learned Additional Government Pleader (T), accepts notice on behalf of the respondent. As regards the first objection of learned counsel for the petitioner, he submits that the show cause notice discloses that the petitioner was put on notice about the liability to pay CGST. Therefore, he submitted that the table on the last page of the respective show cause notice contains a typographical error, whereby the CGST liability is shown as zero. With regard to the second ground of

challenge, i.e. transitional credit eligibility, he submitted that input tax credit (ITC) is claimed on provisional basis and that the assessee concerned should establish entitlement to such tax credit at the end of the relevant assessment period. By referring to the reply of the petitioner, learned counsel submitted that the assessment order records that the documents submitted by the petitioner for availing of transitional ITC were insufficient. Therefore, the petitioner was called upon to provide necessary documents. As regards the third ground of challenge, learned counsel submits that ITC availed of by the petitioner was disallowed because the respondent formed the opinion that the petitioner had obtained GST registrations in the names of its employees for the unlawful purpose of availing of ITC. By referring to the impugned order, he pointed out that the petitioner admitted that ITC was availed of without actual movement of goods on the basis of invoices purportedly issued by specific firms.

5. Upon taking into account the above submissions, the question that falls for consideration is whether the petitioner has made out a case warranting interference in exercise of discretionary jurisdiction. By virtue of

the orders passed in the first round of litigation in this Court, the petitioner was permitted to reply to the respective show cause notice. On examining the orders impugned in these proceedings, it is also evident that personal hearings were provided to the petitioner on multiple days. It appears from the table at internal Page No.18 of the order impugned in W.P.No.1447 of 2024 that personal hearings were held on at least four days.

6. Turning to the grounds of challenge of the petitioner, the first ground of challenge relates to the discrepancy between the amount specified in the show cause notice and the amount specified in the impugned order. It is noticeable that the amount specified as regards CGST liability is zero in the table on the last page of the show cause notice, whereas a specific sum is specified as CGST liability in the corresponding impugned order. On examining the respective show cause notice in entirety, it appears that CGST liability has been indicated in course of setting out the basis of such show cause notice. For the purpose of these proceedings, it is neither necessary nor desirable to record conclusive findings. It is sufficient to record that it appears that there is some basis to say that a typographical error resulted in

the respective show cause notices indicating the CGST liability as zero.

7. As regards the claim with respect to transitional ITC, the impugned orders record that the tax payer was requested to produce relevant documents to verify the claim. Learned counsel for the petitioner submits that all necessary documents in such regard were provided and that such documents are self explanatory. In order to sustain a claim for transitional ITC, the assessee concerned should establish entitlement to such tax credit. If the assessing officer is of the view that further documents should be submitted for such purpose, it does not call for interference in exercise of discretionary jurisdiction.

8. The last ground of challenge relates to the refusal to provide all documents that were relied upon and the refusal to permit cross examination. Based upon the inspection report received through the Intelligence Wing Erode, the respondent formed the opinion that ITC was unlawfully availed of by the petitioner, including by using its employees. The intimation and show cause notice were triggered by this development. In

the impugned orders, references are made to statements by the employees of the petitioner and the statements of the petitioner through its Director. The principles of natural justice cannot be put into a straight jacket. Learned counsel for the petitioner places reliance on the order issued in *Thilagarathinam Match Works*. The said order was in inquiry proceedings pursuant to a charge memo and cannot be compared to assessment proceedings. It should be borne in mind that the obligation of establishing eligibility for ITC is cast on the assessee concerned and, therefore, it is the responsibility of the assessee to place all the material documents to establish the actual purchase and receipt of goods or services. If the facts and circumstances of the case are considered cumulatively, in my view, none of the grounds of challenge constitute grounds for exercising discretionary jurisdiction.

9. For the reasons set out above, all these writ petitions are dismissed by leaving it open to the petitioner to impugn the orders impugned herein by way of statutory appeals. If appeals are filed, the appellate authority may consider and dispose of the same uninfluenced by any of the observations in

this order. There will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

29.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To

The Assistant Commissioner (State Tax),
Gopichettipalayam Circle, Gopichettipalayam,
Erode - 638 052.

SENTHILKUMAR RAMAMOORTHY,J

mtl

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