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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.639 of 2024**
**and W.M.P.Nos.649, 650 of 2024**

Tvl Layam Talent Academy Foundation
Rep by its Director, G.S.Ramesh no.13/1,5th cross street, Indira Nagar, Adyar, Chennai- 600 020. ... Petitioner

-vs-

The Assistant Commissioner (ST) (FAC)
Room no.217, 2nd floor, Integrated Building
for Commercial Taxes and Registration Department,
Nandanam, Chennai- 600 035. ... Respondent

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records in GSTIN 33AADCL4304J1ZT/2018-19 dated 13.10.2023 on the file of the respondent and quash the same as illegal, error of law and error on the face of record and contrary to the provisions of the Goods and Service Tax Act 2017 and direct the respondent to pass



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orders as per law.

For Petitioner : Dr.A.Thiyagarajan, Sr. Advocate for Mr.S.RameshKumar

For Respondent : Mr.C.Harsha Raj, AGP

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**ORDER**

The petitioner assails an assessment order dated 13.10.2023. The petitioner is a registered person under the GST regime. A notice in Form DRC-01 was issued to the petitioner calling upon the petitioner to show cause as to why the sum of Rs.39,81,642/- should not be imposed as tax along with penalty of Rs.10,45,410/-. The petitioner replied to the said notice on 08.08.2023. Eventually, by impugned order dated 13.10.2023, the respondent concluded that the petitioner is liable to pay tax and interest under the five heads set out at internal page 17 of the impugned order. The present writ petition arises in the said facts and circumstances.



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2. Learned senior counsel for the petitioner contended that the impugned order is vitiated by non compliance with the requirements of Section 61 of the Central Goods and Services Tax Act read with Rule 99. In particular, he submits that notice should be issued in Form ASM-10 before a return is taken up for scrutiny. Since this procedure was not followed, he submits that interference is called for with the impugned order. The second contention is that the impugned order records the finding that tax would be payable under the forward charge mechanism if reverse charge mechanism is not applicable. Learned senior counsel contends that the petitioner was not provided a reasonable opportunity to deal with this issue in the show cause notice preceding the assessment.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondent. He submits that the proceedings originated in an inspection. Therefore, he submits that the procedure prescribed in Section 61 of the CGST Act need not be



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followed. As regards the conclusion that the forward charge mechanism would be applicable, he submits that the law imposes the tax obligation ordinarily on the provider of services unless the reverse charge mechanism is prescribed. Therefore, he submits that the said finding does not in any manner vitiate the impugned order. He further points out that an appellate remedy is available to the petitioner.

4. The impugned order reflects that the said order was issued after considering the assessee's replies dated 08.08.2023, 16.08.2023 and 31.08.2023. It also reflects that a personal hearing was granted to the petitioner. Therefore, it is evident that principles of natural justice were followed before issuing the impugned order. In the impugned order, eight alleged defects in the return filed by the petitioner were examined. In respect of each alleged effect, the reply of the assessee was considered and findings were recorded. Eventually, the proposal was dropped in respect of three defects and



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it was held that the petitioner is liable with regard to the five defects specified in the revenue abstract at the foot of the order.

5. In the above facts and circumstances, I am not inclined to exercise discretionary jurisdiction in view of the statutory appeal being available. Therefore, W.P.No.639 of 2024 is dismissed without any order as to costs by leaving it open to the petitioner to file a statutory appeal. No opinion has been expressed herein on the merits of the matter. Consequently, W.M.P.Nos.649, 650 of 2024 are closed.

**12.01.2024**

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

**To**

The Assistant Commissioner (ST) (FAC)
Room no.217, 2nd floor, Integrated Building
for Commercial Taxes and Registration Department,



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Nandanam, Chennai- 600 035.

**SENTHILKUMAR RAMAMOORTHY,J**

rna

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