IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.2980 of 2024
and W.M.P.Nos.3244 & 3245 of 2024

TVS SCS GLOBAL FREIGHT SOLUTIONS LIMITED,
Represented by its Director Mr.Siddharth Jairaj son of
Mr.Ittiyanath Kairaj, aged 53 2nd and 3rd floor,
Old no.10, New no. 19, Blue Haven,
Harrington road, Chetpet, Chennai - 600 031. ... Petitioner

-vs-

1.Assistant Commissioner (ST)
Valluvarkottam Assessment Circle, 4th floor,
Palaniappa Tower, Greams road, Chennai 600 006.

2.Assistant Commissioner (ST)
Nungambakkam Assessment Circle, No.88, Mayor
Ramanathan salai, Chetpet, Chennai- 600 031. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records in the Impugned Order dt. 31/12/2023 in GSTIN 33AACCT7471P1ZS / 2017-18 and bearing Ref. No. ZD331223298543D on the file of the 1st Respondent for the year 2017-18 and remand the matter back to the file of 1st Respondent to consider the Petitioner submissions dated 26/10/2023, 28/12/2023 and 31/12/2023 on merits and pass a speaking order after providing an effective opportunity for personal hearing.

For Petitioner : Mr.R.Parthasarathy
for Mr.Dwarakesh Prabhakaran

For Respondents : Mr.TNC.Kaushik, AGP (T)

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ORDER

The petitioner assails an assessment order issued on 31.12.2023 in respect of the tax period 2017-18. The petitioner is a company engaged in the business of providing freight forwarding services to entities located in India and outside India. Pursuant to an audit conducted by the second respondent, a notice dated 18.04.2023 was issued to the petitioner. The petitioner replied to the notice on 06.06.2023. The notice and reply pertain to 21 alleged defects. Upon receipt of the petitioner's reply, a show cause notice in Form DRC-01 came to be issued on 27.09.2023. This show cause notice was replied to on 29.09.2023. After issuing a letter of personal hearing on 21.12.2023 for a hearing on 28.12.2023, the order impugned herein was issued on 31.12.2023. The present writ petition was filed in the above facts and circumstances.

2. Learned counsel for the petitioner invited my attention to the petitioner's reply dated 06.06.2023. He pointed out that the petitioner responded to the said notice by providing information and documents. With reference to the reply dated 29.09.2023, learned counsel pointed out that the said reply dealt with each alleged defect and provided an explanation with regard thereto. Likewise, he

submitted that the reply dated 26.10.2023 also dealt with each alleged defect. After such reply, learned counsel pointed out that the respondents did not initiate further action until December 2023. In December 2023, a further notice was issued and such notice was also replied to on 28.12.2023.

3. By referring to the e-mail issued on 31.12.2023, learned counsel points out that additional information and documents were provided to the respondents under the said e-mail, and that such e-mail was sent at 1:52 am. With reference to the impugned assessment order and, in particular, the discussion and findings with regard to Defect No.12 and Defect No.13, learned counsel points out that the assessment order covers the pre GST period also. He also points out that the replies submitted by the petitioner and the documents provided by the petitioner were not taken into consideration and that cryptic findings were recorded with regard to Defect No.12 and Defect No.13. He also points out that the tax

demand under these two defects forms a substantial part of the overall tax demand. For all these reasons, he submits that the impugned assessment order warrants interference.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, made submissions in response. He pointed out that the impugned assessment order was preceded by multiple notices commencing from the notice issued on the basis of the audit. Since the principles of natural justice were complied with, learned Additional Government Pleader submits that the petitioner should be directed to approach the appellate authority.

5. The petitioner has placed on record the reply issued to the show cause notice in Form DRC-01 and the reply issued to the notice dated 26.10.2023. On perusal thereof, it is evident that the petitioner has dealt with each alleged defect. The e-mail of 31.12.2023 is also on

record. By such e-mail, the petitioner has annexed relevant documents corresponding to each alleged defect. For instance, as regards Defect No.13, the trial balance pertaining to Tamil Nadu appears to have been annexed. On examining the findings in the impugned order pertaining thereto, it appears that the assessing officer recorded conclusions based on the pan-India turn over on the ground that the petitioner did not submit a Tamil Nadu auditor's certified financial statement. Similarly, as regards Defect No.12, the petitioner explained the difference in turnover by pointing out that such difference was on account of the pre-GST VAT Sales, which were subject to service tax. Thus, the assessment order was issued without duly taking into consideration the replies and documents submitted by the petitioner, and the sequence of dates and events leads to the inference that the entire process appears to have been concluded in haste. For such reasons, the impugned assessment order calls for interference.

6. Hence, the assessment order dated 31.12.2023 is quashed and the matter is remanded for re-consideration. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, take into account the replies and documents submitted by the petitioner and thereafter issue a fresh assessment order. This exercise shall be concluded within a maximum period of ***two months*** from the date of receipt of a copy of this order.

7. W.P.No.2980 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.3244 and 3245 of 2024 are closed.

12.02.2024

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

To

1.Assistant Commissioner (ST), Valluvarkottam Assessment Circle, 4th floor, Palaniappa Tower, Greams road, Chennai 600 006.

2. Assistant Commissioner (ST), Nungambakkam Assessment Circle, No.88, Mayor Ramanathan salai, Chetpet, Chennai- 600 031.

SENTHILKUMAR RAMAMOORTHY,J

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