IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.4042 of 2024
&
WMP Nos.4368 & 4370 of 2024

M/s.T.V.R.Edible Refineries rep. by
Its Proprietor, Sri.T.V.Rajamanickam
No.90/7 H-Doddampatti Post,
Harur,
Dharmapuri-636 903. ... Petitioner

vs

The Deputy State Tax Officer-2,
Harur Assessment Circle,
Harur-636 903. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records of the respondent in his proceeding in GSTIN:33AASPR2571F1ZH/2017-18 and quash the proceeding dated 15.12.2023 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.V.Prashanth Kiran
Government Advocate (Taxes)

ORDER

An assessment order dated 15.12.2023 is assailed largely on the ground that the petitioner's reply dated 13.09.2023 was taken into consideration.

2. The petitioner is a dealer in oil products and a registered person under applicable GST enactments. The petitioner received a notice in Form GST ASMT-10 in May 2023 and this was followed by an intimation dated 24.07.2023. According to the petitioner, the intimation was replied to by pointing out that the disparity between the return in Form GSTR 3B and the supplier's return in Form GSTR 1 was an account of an error made by the supplier by reporting b2c turnover. The petitioner stated that this error was rectified while

filing the annual return of the petitioner in Form GSTR 9. The order impugned herein was issued thereafter on 15.12.2023.

3. Learned counsel for the petitioner referred to the reply dated 13.09.2023 and submitted that such reply was handed over physically. In support of this contention, the acknowledgement at page 47 of the paper book is relied upon. In any event, learned counsel contends that the discrepancy between the two returns was rectified by the petitioner. Moreover, learned counsel submits that circular No.183 was in operation during the relevant assessment period and that the said circular sets out the procedure to be followed in cases pertaining to disparity between the returns. He also submits that the assessing officer should have initiated proceedings against the supplier in terms of sub-section 3 of Section 42 as it stood then.

4. Mr.Prashanth Kiran, learned Government Advocate, made submissions in response. On instructions, he submitted that the reply dated 13.09.2023 was not received by the respondent. He also submits that the acknowledgement at page 47 of the paper book is not an acknowledgement by Kalyanasundaram Suruthi.

5. Although the receipt of the reply dated 13.09.2023 is not admitted by the respondent, on perusal thereof, it appears that the petitioner explained the disparity between the GSTR 3B return of the petitioner and the GSTR 1 return of his supplier by stating that such disparity arose on account of an error by the supplier in reporting b2c turnover. Undoubtedly, the petitioner was negligent in not uploading the reply on the portal and in not participating in proceedings that culminated in the impugned assessment order.

6. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 10% of the disputed demand as a condition for remand. In these circumstances, I am of the view that the interest of justice warrants that the petitioner be provided an opportunity to place the relevant documents on record and contest the tax demand. Solely for that reason, the impugned order warrants interference.

7. Therefore, the impugned order dated 15.12.2023 is quashed subject to the condition that the petitioner remits 10% of the disputed tax demand within a period of two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply within the aforesaid period of two weeks. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received , the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal

hearing, and thereafter, issue a fresh assessment order within two months.

8. W.P.No.4042 of 2024 is disposed of on the above terms and connected miscellaneous petitions are closed. No costs.

11.03.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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To

The Deputy State Tax Officer-2,
Harur Assessment Circle,
Harur-636 903.

SENTHILKUMAR RAMAMOORTHY J.

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