IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 20.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.3947 of 2024
and W.M.P.No.4252 of 2024

HDC Power Systems Pvt Ltd
Rep by its Director
Mr.T.Selvakumar
Principal place of business at
No.43/35, New Street,
Near Padippaga Semmal Ganapathy
Government High School, Chennai 600 024. ... Petitioner

-vs-

1.The Commercial Tax Officer
Choolai North III Chennai
Choolai Assessment Circle,
No.10, Greams Road, 2nd Floor,
Palaniappa Maligai, Chennai - 600 006.

2.The State Tax Officer (Circle)
Commercial Taxes Department
Ashok Nagar Assessment Circle
No.1, PAPJM Annexure Building, 5th Floor,
Greams Road, Chennai 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for records in and connected with order of first respondent in Form GST DRC-07 under rule 142(5) ref: ZD3312232596431 dated 29.12.2023 quash the same as being illegal and in violation of principles of natural justice.

For Petitioner : Mr.B.Sathishsundar

For Respondents : Mr.C.Harsha Raj, AGP (T)

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ORDER

The petitioner challenges an order dated 29.12.2023 by which the credit claimed and availed of by the petitioner under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) was held to be wrongly availed.

2. The petitioner was a registered dealer under the TNVAT Act and had claimed Input Tax Credit (ITC). In respect thereof, the petitioner asserts that two refund orders were issued for the period 01.06.2017 to 30.06.2017 and one refund order and for the period 01.07.2017 to 31.07.2017.

3. The petitioner further states that a notice in Form GST ASMT-10 was received by the petitioner with regard to transitioning of such credit to the GST regime and that the petitioner replied to such notice on 01.12.2020 and enclosed the refund orders. Since the impugned orders came to be issued by disregarding these refund orders, the present writ petition was filed.

4. By referring to the operative portion of the impugned order, learned counsel for the petitioner submits that the credit was reversed entirely on the basis that the refund orders were not

uploaded in the portal. He submits that the petitioner has the relevant documents and should be provided an opportunity to place the same before the assessing officer.

5. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondents. He submits that the assessing officer cannot be faulted for reversing the credit in view of the admitted position that the refund orders were not uploaded on the portal. He also submits that the communication dated 01.12.2022 does not bear the designation of the officer who received such communication.

6. The operative portion of the impugned order is as under:

> "*The taxpayer filed reply and stated that the amount of credit carried forward to electronic credit ledger is based on the refund order issued by the department to the value of Rs.2345655/-. The same has been filed in TRAN-1.*
>
> *The reply furnished by the taxpayer is*

verified and found that the copy of the refund order issued by the department was not available and uploaded in the portal."

7. The petitioner has placed on record the reply dated 01.12.2020, which bears the signature of the recepient and is dated 02.12.2020. The said communication refers to three refund orders, specifies the order numbers and the corresponding refund amounts. The communication also records that copies of the refund orders are enclosed with the communication. In these facts and circumstances, the interest of justice warrants that the petitioner be provided an opportunity to place these documents for the consideration of the assessing officer. Solely for that reason, the order impugned herein calls for interference.

8. Hence, the impugned order dated 29.12.2023 is quashed and the matter is remanded for re-consideration. The petitioner shall submit all relevant documents to the assessing officer within a

maximum period of ***two weeks*** from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issuing a fresh order within a maximum period of ***two months*** from the date of receipt of the documents.

9. W.P.No.3947 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.4252 of 2024 is closed.

20.02.2024

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

To

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SENTHILKUMAR RAMAMOORTHY,J

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