IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.4349 of 2024**
**and W.M.P.Nos.4681 and 4682 of 2024**

Tvl. Viveka Essence Mart
Represented by its Partner: Kodancha Rao
No.285/128, Ground Floor,
Wall Tax Road East
Park Town, Chennai 600 003. ... Petitioner

-vs-

The Deputy State Tax Officer-II
Park Town Assessment Circle
Office of Deputy Commercial Tax Officer
Part Town: North-I Chennai North
Integrated Commercial Taxes Department Building
No.32, Elephant Gate, Vepery,
Chennai 600 007. ... Respondent

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, call for the records on the file of the respondent in GSTIN:

33AAFV06451ZV/2017-18 and consequential order u/s.73 and Summary of the Order in Form GST DRC-07 having Reference No: ZD331223140667K all dated 19.12.2023 for the tax period July 2017 to March 2018 relating to Financial Year (FY) 2017-18 and quash the same as illegal, contrary to the provisions of the TNGST / CGST Acts, without jurisdiction and authority of law and in violation of principles of natural justice and fair play.

For Petitioner : Mr.T.Pramodkumar Chopda, Sr. Adv. for Ms.P.Aruna Chopda

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

*********

**ORDER**

The petitioner assails an assessment order dated 19.12.2023 in respect of the assessment period 2017-18. Pursuant to an audit, proceedings were initiated against the petitioner by issuing an intimation and show cause notice. Such proceedings culminated in the assessment order impugned herein.

2. Learned senior counsel for the petitioner invited my attention to the impugned assessment order. With reference to discrepancy 15, which relates to purchase turnover and the alleged discrepancy between the turnover as per GST returns and the profit and loss account of the petitioner, learned senior counsel pointed out that the applicable GST laws came into force on 01.07.2017. Since the financial year extends from 01.04.2017 to 31.03.2018, he pointed out that it becomes necessary to exclude both the sales turnover and purchase turnover pertaining to the period 01.04.2017 to 30.06.2017. With reference to the sales turnover, learned senior counsel pointed out that the assessing officer recognized the requirement for such exclusion and duly excluded the sales turnover for the above mentioned period. On the contrary, as regards the purchase turnover, he pointed out that such purchase turnover for the above

mentioned period was included while computing the alleged tax liability. He also pointed out that the tax liability in respect of alleged discrepancy between the GSTR-1 and GSTR-3B returns was dropped pursuant to the petitioner's explanation, whereas, in the revenue abstract at the foot of the order, liability was imposed in respect thereof. On the same ground, he points out that the liability in respect of RCM on inward supply was dropped but finds place in the revenue abstract.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the principles of natural justice were adhered to by providing a reasonable opportunity to the petitioner. Therefore, he submits that discretionary jurisdiction should not be exercised and that the petitioner may avail of the statutory remedy.

4. From the impugned order and, in particular, the findings in respect of discrepancy 4, it is evident that the assessing officer was cognizant of the necessity to exclude the sales turnover between 01.04.2017 and 30.06.2017. By contrast, while recording findings in relation to discrepancy 15, the requirement of excluding the purchase turnover pertaining to the above period was lost sight of by the assessing officer. As contended by learned senior counsel for the petitioner, it is also clear that the assessing officer had dropped proceedings in respect of the tax liability arising out of alleged discrepancy between the GSTR-1 and GSTR-3B returns and RCM on inward supply, whereas the revenue abstract at the foot of the order specifies liability in respect of these heads. Thus, the impugned assessment order suffers from non application of mind resulting in patent errors. For such reason, the impugned assessment order warrants interference.

5. For reasons set out above, the impugned assessment order is

quashed and the matter is remanded for re-consideration. The respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a maximum period of ***two months*** from the date of receipt of a copy of this order.

6. W.P.No.4349 of 2024 is disposed of. No costs. Consequently, W.M.P.Nos.4681 and 4682 of 2024 is closed.

**22.02.2024**

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

**To**

The Deputy State Tax Officer-II
Park Town Assessment Circle
Office of Deputy Commercial Tax Officer
Part Town: North-I Chennai North
Integrated Commercial Taxes Department Building
No.32, Elephant Gate, Vepery,
Chennai 600 007.

**SENTHILKUMAR RAMAMOORTHY,J**

rna

**W.P.No.4349 of 2024**
**and W.M.P.Nos.4681 and 4682 of 2024**