IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.4655 of 2024 and
W.M.P.Nos.5085 & 5086 of 2024

M/s.Yashwin Enterprises,
Represented by its Proprietor,
Mr.R.Subramani, (M/A 65),
No.136, Ground floor,
Canal Bank Road, Gandhi Nagar,
Chennai-600 020. ... Petitioner

-vs-

1.The Deputy Commissioner (ST),
South-III,
Integrated Building for Registration and
Commercial Taxes Department,
Chennai-35.

2.The Assistant Commissioner (ST)(FAC),
Adyar Assessment Circle,
Integrated Commercial Taxes and
Registration Department,
Nandanam, Chennai-35. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to quash the impugned order dated 31.05.2023 bearing GSTIN No.33KQVPS7548A1Z5/2019-2020 for financial year 2019-2020 passed by the 2nd respondent as arbitrary in nature.

For Petitioner : Mr.J.Ashish

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader (T)

ORDER

The petitioner assails an order dated 31.05.2023 and the consequential recovery notice dated 20.12.2023.

2. The petitioner is a registered person under applicable GST laws. He asserts that he was filing returns and paying tax regularly. It is further asserted by the petitioner that he became aware of the impugned order only upon receipt of phone calls from the HDFC Bank informing him about notice of recovery dated 20.12.2023. Thereafter, upon examining the GST portal, the petitioner became aware of the intimation, show cause notice and impugned order. The present writ petition was filed in the above facts and

circumstances.

3. Learned counsel for the petitioner challenges the impugned assessment order on the ground that Section 74 of the State Goods and Services Tax Act, 2017 was invoked although the ingredients of the said provision are not satisfied. He further submits that the intimation, show cause notice and assessment order were posted in the 'View Additional Notices' tab on the GST portal. The last submission is that the relevant goods were purchased by the petitioner in the year 2020, whereas Input Tax Credit (ITC) was reversed on the ground that the supplier was not carrying on business at his registered place of business in the year 2021.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondents. By referring to the show cause notice, he points out that it was stated therein that there are reasons to believe that ITC was claimed and availed fraudulently and with the intent to evade payment of output tax. On account of such statement being made in the show cause notice, learned Additional Government Pleader submits that

Section 74 was correctly invoked in this case. He further submits that the assessment order was issued on 31.05.2023 and that the writ petition was liable to be rejected on account of laches.

5. The petitioner has asserted that he was unaware of the intimation, show cause notice and assessment order until he received a phone call from the HDFC Bank through its manager. The documents on record, including the assessment order, disclose that the petitioner was not heard before such assessment order was issued, albeit the petitioner was put on notice. From the impugned assessment order, it appears that the primary reason for reversing ITC was that the supplier of goods was found to be non-existent. The statute imposes the obligation on the registered person availing of ITC to establish the genuineness of the transaction by placing on record relevant documents such as the tax invoices, e-way bills, lorry receipts, proof of payment to the supplier, etc.

6. Solely with a view to provide an opportunity to the petitioner to

establish the genuineness of the transaction and consequently the genuineness of the ITC claim, the impugned order calls for interference. At the same time, it should be noticed that such impugned order was issued on 31.05.2023 and the petitioner has approached this Court belatedly. It should also be noticed that it appears *prima facie* that the ingredients of Section 74 were satisfied. In order to safeguard the interest of revenue in the facts and circumstances, the petitioner shall remit 10% of the disputed tax demand as a condition for remand. The petitioner, through counsel, also agrees to this condition.

7. For reasons set out above, the impugned assessment order is quashed and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand within a maximum period of two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to issue a reply to the show cause notice within a maximum period of two weeks from the date of remittance. Upon receipt thereof and after being satisfied that 10% of the disputed tax demand was received, the assessing officer is directed to provide a

reasonable opportunity, including a personal hearing, and thereafter issue a fresh assessment order within a period of two months therefrom.

8. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

26.02.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J.

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