IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.04.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.4893 of 2024
&
WMP Nos.5357 & 5359 of 2024

BSH Household Appliances Manufacturing Private Limited,
Represented by its Authorised Signatory,
Mr.Rama Krishna Venna
4th Floor, South Tower KRM Plaza,
No.2, 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),
Amaindakarai Assessment Circle,
F-20, 2nd Floor, 1st Avenue,
Anna Nagar, Chennai-600 102.

3. Assistant Commissioner (ST),
Nandanam Assessment Circle,
Taluk Office Building,
Greenways Road, Chennai-600 028. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to Impugned Order bearing Reference No.GSTIN/33AAECB6071D1Z3/2017-18 dated 31.12.2023 along with consequential Summary Order in Form GST DRC-07 bearing Reference No.ZD331223298463D dated 31.12.2023 issued by the 1st Respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran for
M/s.Lakshmi Kumaran and Sridharan

For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate (Taxes)

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ORDER

An order in original dated 31.12.2023 is challenged in this writ petition primarily on the ground that the impugned order travelled beyond the scope of the show cause notice.

2. Pursuant to an audit of the books of account of the petitioner, audit observations were issued. Pursuant thereto, a show cause notice dated 26.09.2023 was issued. Such show cause notice was replied to by the petitioner on 25.10.2023. The impugned order was issued thereafter on 31.12.2023. By inviting my attention to the

revenue abstract in the show cause notice, learned counsel for the petitioner submits that proceedings were dropped in respect of audit slip Nos. 2.1, 2.6 and 2.14. However, he submits that tax liability was imposed in respect of audit slip Nos.2.11, 2.16 and 5.1, other than audit slip No.2.9, which were not covered in the show cause notice.

3. Ms.Amirtha, learned Government Advocate, appears on behalf of the respondents. She submits that the three heads of demand set out in Table No.4, other than audit slip No.2.9, were also covered in the show cause notice. By referring to page 103 of the typed set, she points out that the credit note issue was dealt with therein. Likewise, by referring to page 105 of the typed set, she points out that the issue relating to the eligibility of the petitioner to input tax credit was covered therein. As regards the liability of the petitioner for other income reported in the profit and loss account, learned counsel referred to audit slip No.5 at pages 107 and 108 and submitted that this head of liability was also referred to in the show cause notice.

4. As per Section 73(1) of applicable GST enactments, the

registered person is required to be put on notice and called upon to show cause notice with regard to the amounts payable by him in respect of tax, interest and penalty, whether such liability arises out of non-payment, short payment, erroneous refund or wrongful availment or utilization of input tax credit. As regards liability in respect of credit notes, on perusal of the show cause notice, liability was computed therein. However, the petitioner was merely called upon to provide copies of original invoices and credit notes to verify eligibility and not called upon to show cause. As regards eligibility in respect of input tax credit claimed by the petitioner, the show cause notice merely indicated the amounts claimed by the petitioner as input tax credit in its GSTR 3B returns and called upon the petitioner to provide invoice-wise details. There was no indication in the show cause notice of the proposal to reversal input tax credit or otherwise impose tax liability. Turning to tax liability on other income reported in the profit and loss account, the show cause notice referred to three sources of income from the profit and loss account and specified the amounts mentioned in the profit and loss account in respect of these three sources of income. Beyond that, no indication of the petitioner's potential liability was indicated therein. In these circumstances, the impugned order cannot be sustained with regard to the above heads of demand. As regards audit slip No.2.9, it clearly forms part of the show cause notice. By taking into account the overall facts and circumstances, subject to putting the petitioner on terms, a fresh show cause notice is necessary as regards audit lip Nos.2.11, 2.16 and 5.1.

5. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit a sum of Rs.10 lakhs as a condition for remanding the matter.

6. For reasons set out above, the impugned order dated 31.12.2023 is set aside subject to the condition that the petitioner remits a sum of Rs.10 lakhs within two weeks from the date of receipt of a copy of this order. It is open to the respondents to initiate fresh proceedings in respect of audit slip Nos.2.11, 2.16 and 5.1 by issuing a show cause notice in accordance with Section 73 of applicable GST enactments. The issue relating to audit slip No.2.9

shall be re-examined either separately or along with the other issues.

7. W.P.No.4893 of 2024 is disposed of on the above terms. Consequently connected miscellaneous petitions are closed. No costs.

29.04.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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To

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