IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.6219 of 2024
&
WMP Nos.6897 & 6898 of 2024

Tvl. Vikram Corporation,
Represented by its Authorised Signatory,
No.499, RG Street,
Coimbatore, Tamil Nadu – 641 001. ... Petitioner

vs

The Assistant Commissioner (ST),
Bazaar Street Circle,
Coimbatore – 641 018,
Tamil Nadu ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, call for the records of the impugned assessment order in ZD3309232291879 dated 29.09.2023 under Section 73 of the CGST/TNGST Act, 2017, for tax period 2017-18 and uploaded along with Form DRC-07 from the files of the respondent herein, quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

The assessment order dated 29.09.2023 in respect of the assessment period 2017-18 is under challenge.

2. The petitioner is a partnership firm dealing in oil and oil seeds. The petitioner asserts that returns in GSTR 1 and GSTR 3B were filed periodically in respect of the above mentioned assessment year. A notice in Form ASMT 10 was issued in relation thereto on 10.06.2023. Upon receipt of show cause notice dated 16.08.2023 alleging that the petitioner was liable to pay a sum of Rs.2,16,803/- each towards CGST and SGCT, the petitioner replied on 28.08.2023. By such reply, the petitioner stated that sums of Rs.1,79,806/- each were paid towards CGST and SGST along with interest of Rs.77,903/- each towards CGST and SGST. On that basis, the petitioner requested that proceedings be dropped. The impugned assessment order was issued thereafter.

3. Learned counsel for the petitioner referred to the show cause notice and pointed out that the amount mentioned therein as being due and payable towards CGST and SGST each is Rs.2,16,803/-. She also points out that the petitioner was not called upon to show cause with regard to proposed penalty. By turning to the impugned assessment order, learned counsel pointed out that the petitioner has been called upon to pay a sum of Rs.1,43,048/- towards SGST and a similar sum towards CGST. She also pointed out that the assessment order refers to the payment of sums of Rs.2,57,709/- each by the petitioner towards CGST and SGST, whereas the petitioner had paid Rs.1,79,806/- each towards CGST and SGST. With reference to such assessment order, learned counsel also pointed out that penalty was imposed although there was no reference to proposed penalty in the show cause notice.

4. In response to these submissions, learned Government Advocate submits that the petitioner was provided sufficient opportunities to contest the tax demand. Apart from the intimation and show cause notice, she pointed out that personal hearings were offered to the petitioner by issuing notices with regard to a personal hearing on 05.09.2023 and 13.09.2023. Since the petitioner did not avail of such opportunities, she contended that no case is made out to interfere under Article 226 of the Constitution of India.

5. On examining the show cause notice dated 16.08.2023, it is clear that the petitioner was called upon to show cause as to why sums of Rs.2,16,803/- each are not payable towards CGST and SGST. The petitioner was not called upon to show cause with regard to proposed penalty.

6. The reply dated 28.08.2023 of the petitioner is on record. By such reply, the petitioner asserted that a sum of Rs.1,79,806/- each was paid towards CGST and SGST along with interest of Rs.77,903/- each towards CGST and SGST. When the impugned assessment order is examined against this backdrop, it is unclear as to how the liability of Rs.1,43,048/- each towards SGST and CGST was arrived at. The assessment order also refers to the payment of Rs.2,57,709/- by the petitioner, whereas documents on record indicate that the sum paid was Rs.1,79,806/- each towards CGST and SGST. In addition, as contended by learned counsel for the petitioner, penalty was imposed without providing the petitioner an opportunity to issue show cause in respect thereof. For all these reasons, the impugned assessment order warrants interference.

7. Hence, the assessment order dated 29.09.2023 is quashed and the matter is remanded for reconsideration. The respondents are directed to provide a reasonable opportunity to the petitioner,

including a personal hearing, and thereafter issue a fresh assessment order within two months from the date of receipt of a copy of this order.

8. W.P.No.6219 of 2024 is disposed on the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

12.03.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

The Assistant Commissioner (ST),
Bazaar Street Circle,
Coimbatore – 641 018,
Tamil Nadu

SENTHILKUMAR RAMAMOORTHY J.

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