IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.6626 of 2024
and W.M.P.Nos.7350 & 7352 of 2024

M/s.Jai Bhairav Stones,
Represented by its Partner, Amit Kumar
SF.No.711/1, 716/1,
Thuppuganapalli Village,
Housr, Krishnagiri 635 119. ... Petitioner

-vs-

State Tax Officer (ST)
Hosur South - 2 Circle
Hosur 635 119. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent's order dated 23.08.2023 in GSTN 33AAJFJ1731E1ZT and quash the same.

For Petitioner : Mr.J.Adithya Reddy

For Respondent : Mr.V.Prashanth Kiran, GA (T)

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ORDER

The petitioner challenges an assessment order dated 23.08.2023 primarily on the ground that documents produced by the petitioner were disregarded.

2. The petitioner is a dealer in granite slabs and a registered person under applicable GST enactments. Upon receipt of an intimation on 27.03.2023 alleging that the petitioner had availed of Input Tax Credit (ITC) fraudulently, the petitioner replied on 15.06.2023 refuting the charge and attaching requisite documents. A show cause notice dated 26.07.2023 followed. In such show cause notice, it was stated that certain suppliers were issuing fake invoices and that the petitioner was a beneficiary thereof. The petitioner replied to the show cause notice on 26.07.2023 and pointed out that

the e-way bill system was introduced from 1st April 2018 and is not applicable to the relevant supply. The petitioner also uploaded the transport invoice and the bank statement. It was further stated that previously uploaded documents be taken into consideration.

3. Learned counsel for the petitioner invited my attention both to the reply to the intimation and the reply to the show cause notice. He pointed out that relevant documents such as the invoice, the transporter's invoice and bank statements were attached to such replies. He further submitted that the impugned assessment order did not refer to or discuss any of these documents and instead merely reproduced the show cause notice. He also submitted that no personal hearing was provided to the petitioner.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the onus is on person availing ITC to produce all documents to establish the genuineness of the transaction. In spite of being put on notice that

fake invoices were generated by Jai Bhairav Stones, he contended that the petitioner did not place on record all relevant documents to establish that the petitioner actually purchased goods from the supplier concerned and put them to use.

5. The reply to the intimation indicates that documents were attached thereto, but the nature of such documents is not evident from the reply. By contrast, the reply to the show cause notice states that the e-way bill system had not been introduced at the relevant point of time. It also expressly refers to the transporter's invoice copy and bank statement and documents previously uploaded.

6. Upon receipt of such reply, in the operative portion of the impugned order, it is recorded as under:

> "*Your reply for the above notice submitted was scrutinized and it is found that you have uploaded the invoice copies only and not submitted the e-way bill copy as supporting document for your claim. Hence, the proposal is*

confirmed and the taxable person is here by Further, advised to pay the amount of tax as ascertained above along with the amount of applicable interest calculated up to the date of payment of duesand penalty under section 74(5) by 30.08.2023. Failing which action will be initiated against you as per the procedures laid down in the provisions of the TNGST Act, 2017 and the CGST Act, 2017."

7. The above extract indicates clearly that the documents produced by the petitioner along with the reply to intimation and reply to show cause notice were disregarded and the assessing officer reproduced the statements from the show cause notice. Since there was no application of mind, the impugned assessment order is not sustainable.

8. Hence, the impugned assessment order dated 23.08.2023 is quashed and the matter is remanded for re-consideration. After providing a reasonable opportunity to the petitioner, including a

personal hearing, the assessing officer is directed to issue a fresh assessment order within ***two months***. The petitioner is granted leave to submit additional documents to establish that the availment of ITC was in order.

9. W.P.No.6626 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.7350 and 7352 of 2024 are closed.

15.03.2024

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

To

State Tax Officer (ST)
Hosur South - 2 Circle
Hosur 635 119.

<u>SENTHILKUMAR RAMAMOORTHY,J</u>

rna

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