IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.6903 of 2024
and W.M.P.Nos.7697 & 7698 of 2024

Subasri Realty Private Limited,
Represented by its CFO, Mr.M.Rajasekar
At No.86, Old No.1091,
Periyar EVR High Road, Chennai 600 006. ... Petitioner

-vs-

Assistant Commissioner (ST)
Choolai Assessment Circle
Palaniappa Maligai, Greams Road
Chennai 600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent's order dated 29.12.2023 in GSTIN: 33AAICS5415L1Z7/2017-18 and quash the same and further direct the respondent from refraining from taking any action against the petitioner for determination of liability for the year 2017-18 under 73 of the Central Goods and Services Tax Act / Stage Goods and Services Tax Act.

For Petitioner : Mr.Adithya Reddy

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

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ORDER

An assessment order dated 29.12.2023 is the subject of challenge in this writ petition.

2. Upon receipt of a notice in Form GST ASMT-10 on 19.07.2023, the petitioner replied on 08.08.2023 by annexing documents. The Chartered Accountant of the petitioner stated on behalf of the petitioner that the expenses in respect of which TDS was deducted, as per Form 26AS, do not form part of the revenue. A re-conciliation statement appears to have been annexed thereto along with sample invoices. Thereafter, a show cause notice was issued on

31.08.2023 and such notice was also replied to on 26.09.2023. The impugned assessment order was issued in these facts and circumstances.

3. Learned counsel for the petitioner referred to the impugned order and pointed out that it is recorded therein that the petitioner had provided a descriptive reply and had not enclosed the re-conciliation statement. In light of the Chartered Accountant's reply, he contends that these findings are unsustainable.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the impugned order contains a list of documents that were required to be provided by the petitioner. He points out that these documents were not submitted by the petitioner and, therefore, the impugned order contains no infirmity.

5. The reply from the Chartered Accountant in Form GST

ASMT-11 refers categorically to a re-conciliation statement being attached along with sample invoices for review. It is unclear as to whether the petitioner submitted the audited balance sheet, trial balance and annual report. In the operative portion of the impugned order, the assessing officer recorded as under:

> *"Defect pointed out in this office show cause notice DRC01 (Ref.No.ZD3308231869390) dated: 31.08.2023 and the reply filed by the taxpayer are carefully verified and it is found that the taxpayer had given descriptive reply regarding the comparison of turnover as per Form 26AS and GSTR3B. They have also stated that they have furnished a reconciliation statement of Form 26AS along with the reply but there is no such reconciliation statements found to be uploaded along with reply.*
>
> *In view of the above facts the reply filed by the taxpayer is found to be incomplete and hence cannot be considered. The proposal as per this office show cause notice hereby confirmed."*

6. The above extract reveals that the assessing officer rejected the petitioner's reply on the ground that such reply was descriptive and on the ground that no re-conciliation statements were uploaded.

In the face of the reply to the notice in Form ASMT-10, this conclusion is unsustainable. It should be noticed, however, that the petitioner has also failed to submit all relevant invoices pertaining to alleged expenses as to justify the non-inclusion of such expenses in the taxable turnover. Nonetheless, the order calls for interference since the explanation of the petitioner was not duly considered.

7. For reasons set out above, the impugned order is quashed and the matter is remanded for re-consideration. The petitioner is permitted to submit any additional documents to explain the disparity between the taxable turnover reported in its returns and the details contained in Form 26AS. This shall be done within a maximum period of ***two weeks*** from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is 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 or receipt of the petitioner's reply.

8. W.P.No.6903 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.7697 and 7698 of 2024 are closed.

19.03.2024

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

To

Assistant Commissioner (ST)
Choolai Assessment Circle
Palaniappa Maligai, Greams Road
Chennai 600 006.

SENTHILKUMAR RAMAMOORTHY,J

rna

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