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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6619 of 2024 and
W.M.P.Nos.7346 & 7347 of 2024

Bhagyam Exports,
Represented by its Proprietor,
N.Dhandapani,
No.55, GNG Road, Varadharajapuram,
Ambattur, Chennai-600 053. ...Petitioner

Vs.

Assistant Commissioner,
Ambattur Division,
Chennai North Commissionerate,
R-40/A1, TNHB Building,
100 feet road, Mogappair (East),
Chennai-600 037. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the impugned proceedings of the respondent passed order-in-original No.44/2023 (GST-DC) dated 20.12.2023 and quash the same as the impugned order relies upon the time barred audit report dated 21.02.2022 passed under Section 65 of the CGST/SGST Act 2017.

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For Petitioner : Mr.N.Murali

For Respondent : Mr.Rajnish Pathiyil,
Senior Standing Counsel

ORDER

An assessment order dated 20.12.2023 is assailed by the petitioner primarily on the ground that objections raised in the reply dated 12.07.2022 were not considered.

2. The petitioner is a registered person under applicable GST enactments and is a manufacturer of garments. Pursuant to an audit, the audit report was issued on 21.02.2022. Thereafter, an intimation and a show cause notice were issued in May and June 2022, respectively. The show cause notice was replied to by the petitioner on 12.07.2022. Eventually, the proceedings culminated in the impugned assessment order dated 20.12.2023.

3. By inviting my attention to the impugned assessment order, learned counsel for the petitioner points out that the said order dealt with two issues, namely, wrong availment of Input Tax Credit (ITC) due to claim of higher rate of drawback and wrong availment of ITC due to

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claim of rebate of State levies. On both issues, he points out that the impugned order refers to the tax payer's reply but neither discusses the reply nor records a finding as to why the reply was not satisfactory. He also points out that 10% of the disputed tax demand was remitted by the petitioner on 27.02.2024. He further contends that the audit report was submitted beyond the period of limitation.

4. Mr.Rajnish Pathiyil, learned senior standing counsel, accepts notice for the respondent. He contends that the audit report was not issued beyond the period of limitation prescribed in Section 65 of applicable GST enactments if the period of limitation is computed after taking into account the e-mail of 04.08.2021 from the petitioner.

5. On examining the impugned assessment order, it is noticeable that such order refers to the tax payer's reply but does not discuss such reply or record any findings in relation thereto. In the reply, the petitioner/tax payer contended that the audit report issued on 21.02.2022 is beyond the period of limitation prescribed in sub-section (4) of Section 65. This contention and other contentions raised in such reply were completely disregarded in the impugned assessment order and no

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findings were recorded in relation thereto. Without expressing any opinion on the merits of such contentions, in view of the fact that no findings were recorded in relation thereto, the impugned assessment order calls for interference. It should also be noticed in this regard that the petitioner remitted 10% of the disputed tax demand.

6. For reasons set out above, the impugned assessment order is quashed and the matter is remanded for reconsideration. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh speaking assessment order after duly taking note of all the contentions of the petitioner. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

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

13.03.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

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To

Assistant Commissioner,
Ambattur Division,
Chennai North Commissionerate,
R-40/A1, TNHB Building,
100 feet road, Mogappair (East),
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