IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.7545 of 2024
and W.M.P.Nos.8465 & 8467 of 2024

Bina Mukeh Kumar Shah ... Petitioner

-vs-

The Assistant Commissioner (ST),
Office of the Assistant Commissioner,
Moore Market Assessment Circle,
Integrated Building for Commercial Taxes,
Dept. No.32, Elephant Gate Bridge Road,
(Wall Tax Road) Vepery, Chennai - 03. ... 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 in GSTIN 33AAJPS8010R1Z6 / 2017-18 dated 27.12.2023 on the file of the respondent and quash the same as illegal, error of law and error on the face of record and contrary to the provisions of the Goods and Service Tax Act, 2017 and direct the respondent to pass orders as per the law.

For Petitioner : Dr.A.Thiyagarajan, Sr. Adv.
for Mr.S.Ramesh Kumar

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

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ORDER

An order in original dated 27.12.2023 is assailed on the ground that the petitioner's reply was not taken into consideration. The petitioner is a registered person under applicable GST enactments. The petitioner received a show cause notice dated 30.09.2023 calling upon the petitioner to show cause as to why liability should not be imposed for wrong availment of Input Tax Credit (ITC). The petitioner replied to such show cause notice on 26.10.2023 by asserting that the petitioner did not import goods. It was further submitted that no particulars were provided in the show cause notice with regard to the invoices in respect of which there is mismatch between the petitioner's GSTR-3B return and the GSTR-1 and 2A returns at the end of the supplier.

2. Learned senior counsel for the petitioner invited my attention to the impugned order and pointed out that the impugned order does not consider the petitioner's reply dated 26.10.2023 and instead proceeds on the basis that the petitioner had reversed the ITC in the GSTR-9 annual return. On instructions, he further submits that the petitioner is agreeable to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice on behalf of the respondent. He points out that the petitioner did not enclose necessary documents to discharge the burden of establishing that she was entitled to the ITC availed of.

4. On examining the impugned order, it is evident that the respondent proceeded on the basis that the petitioner had reversed the ITC in the GSTR-9 return and that the GSTR-9 return was unavailable.

5. On perusing the reply of the petitioner, there is no assertion therein that the ITC was reversed in the GSTR-9 return. Thus, there appears to be a disconnect between the reply and the findings recorded in the impugned order. Hence, the impugned order calls for interference.

6. For reasons set out above, the impugned order dated 27.12.2023 is quashed subject to the petitioner paying 10% of the disputed tax demand as agreed to within a period of ***two weeks*** from the date of receipt of a copy of this order. The petitioner is also permitted to submit a detailed reply to the show cause notice within the aforesaid period by enclosing all relevant documents. Upon

receipt thereof and upon being satisfied that 10% of the disputed tax demand was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of ***two months*** from the date of receipt of the petitioner's reply.

7. W.P.No.7545 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.8465 and 8467 of 2024 are closed.

22.03.2024

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

To

The Assistant Commissioner (ST),
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SENTHILKUMAR RAMAMOORTHY,J

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