IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.6918 of 2024 and
W.M.P.Nos.7710 & 7713 of 2024

The Tiruchengode Agricultural Producers,
Co-op. Marketing Society Limited,
Represented by its General Manager,
K.Balasubramaniam,
No.9, Velur road,
Tiruchengode, Tamil Nadu-637 211. ... Petitioner

-vs-

State Tax Officer,
Tiruchengode Town,
Sankagiri Road,
Tiruchengode-637 211. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in the impugned order dated 12.12.2023 with the reference

GSTIN:33AAAAT2058C1Z0/2017-2018 in the files of the respondent and quash the same as arbitrary, without jurisdiction, and contrary to the express provisions of the law and notifications issued thereunder.

For Petitioner : Mr.S.Ramamoorthy
for Mr.N.Murali

For Respondent : Mrs.K.Vasanthamala, GA(T)

ORDER

An assessment order dated 12.12.2023 is the subject of challenge.

2. The petitioner is an Agricultural Producers Co-operative Marketing Society. The petitioner asserts that the principal object of the society is to bring together farmers and purchasers of the produce of such farmers by providing a market place. Pursuant to a notice in Form GST ASMT-10 dated 01.09.2023, proceedings were initiated against the petitioner. The petitioner replied to such notice on

28.09.2023. Since the respondent did not accept the petitioner's reply, a show cause notice was issued on 14.10.2023. The petitioner replied to such show cause notice on 11.11.2023. In the reply, the petitioner contended that the petitioner is not engaged in any supply and that no tax liability is imposable on the petitioner as a consequence. However, the impugned assessment order was issued on 12.12.2023.

3. Learned counsel for the petitioner contended that the goods dealt with on the petitioner's market place are exempted goods under Notification No.2/2017-Central Tax (Rate) dated 28.06.2017 (Notification No.2). Unfortunately, he submits that Notification No.2 was not referred to in the petitioner's reply to the show cause notice. Notwithstanding the petitioner's failure to refer to and rely on such Notification, learned counsel contended that the GST authorities were under the statutory obligation to examine whether the relevant goods are exempted while undertaking assessment. The judgment of the Bombay High Court in *Wasp Pump Private Limited v. Union of*

India, 2008 (230) E.L.T. 405 (Bombay) and the judgment of the Karnataka High Court in *Indo Nissin Foods Ltd. v. Union of India, 1993 (68) E.L.T. 292 (Karnataka)*, were relied upon in this regard. By further relying on the judgment of the Division Bench of this Court in *The Tiruchengode Co-operative Marketing Society Limited v. The State of Tamil Nadu, 41 STC 212,* learned counsel contended that the petitioner society was held to be not liable to sales tax because it did not have the authority to transfer the property in goods. Learned counsel further submits that the petitioner would be in a position to establish that the relevant goods are exempted goods, if provided an opportunity of personal hearing.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. At the outset, she submits that an appellate remedy is available to the petitioner and that no case is made out to exercise jurisdiction under Article 226 of the Constitution of India. She further submits that the goods dealt with by the petitioner are

not fully exempt from the payment of GST. In this connection, she relies upon Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 (Notification No.1) and points out that turmeric is covered under sl.no.44 thereof, groundnut under sl.no.65 thereof and coconut under sl.no.85 thereof. She further submits that all these goods carry tax at 2.5% each towards CGST and SGST. She also points out that a personal hearing was offered to the petitioner under the show cause notice.

5. In response to the above contentions, learned counsel for the petitioner submits that rates were fixed under Notification No.1 by classifying the goods under VI schedules. He further submits that Notification No.2 qualifies Notification No.1 and that goods falling within the scope of the Schedule II of Notification No.2 are exempted from the tax prescribed under Notification No.1.

6. On examining the show cause notice and the reply thereto, it

is evident that the petitioner did not raise the issue relating to exemption of goods dealt with by the petitioner before the assessing officer. The assessing officer also did not take note of either Notification No.1 or Notification No.2. The impugned assessment order was issued in those facts and circumstances. While the petitioner was offered a personal hearing under show cause notice dated 14.10.2023, no personal hearing was provided after the petitioner replied to such show cause notice and prior to the issuance of the assessment order. Upon taking into account the above facts and circumstances, especially the fact that the relevant Notifications were not taken into consideration while issuing the impugned assessment order, I am of the view that the impugned assessment order calls for interference.

7. Therefore, impugned assessment order dated 12.12.2023 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 assessment order within a period of two months from the date of receipt of a copy of this order. The petitioner is directed to extend full cooperation by attending the personal hearing offered without fail.

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

14.03.2024

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

State Tax Officer,
Tiruchengode Town,
Sankagiri Road,
Tiruchengode-637 211.

SENTHILKUMAR RAMAMOORTHY,J

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