IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.03.2024**

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6927 of 2024
and W.M.P.Nos.7725 & 7726 of 2024

M/s.Sunrise Freight Movers Private Limited,
(Represented by its Director Mr.Ramakant Saraf),
No.10, Old No.151, 1st Floor, Choolai High Road,
Chennai 600 112. ...Petitioner

Vs.

1.The State Tax Officer (also known as
The Commercial Tax Officer),
Choolai Assessment Circle,
No.10, Second Floor,
Palaniappa Building, Greams Road,
Chennai 600 006.

2.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St. George,
Chennai 600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the first respondent herein in Form GST DRC-07 in

ZD3312232510721 dated 28.12.2023 along with Annexure in GSTIN: 33AAFCS1371Q1Z1/2017-18 dated 28.12.2023, and quash the same.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.C.Harsha Raj, AGP (T)

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ORDER

An assessment order dated 28.12.2023 is the subject of challenge. The petitioner is engaged in the business of providing services of transportation of goods. Such services are provided on a Pan-India basis. According to the petitioner, the services provided by it fall within the scope of Notification No.13/2017 - Central Tax (Rate) dated 28.06.2017 and, therefore, GST is leviable on the recipient of services on reverse charge basis. Consequently, in its returns, the petitioner indicated NIL turnover in the GSTR-1 statement. In those circumstances, the petitioner states that a notice in Form GST ASMT-10 was received in July 2023. Such notice could not be replied to on account of the ill-health of the Director who was handling the matter. Upon receipt of the show cause notice in Form GST DRC-01, the petitioner submitted a reply. By such reply, the petitioner asserted that the entire turnover is taxable under RCM basis on the recipient of service. Apart from uploading certain documents with the reply, the petitioner handed over a physical copy of other documents. The impugned order was issued thereafter on 28.12.2023.

2. Learned counsel for the petitioner referred to the reply dated 21.12.2023 to the show cause notice and pointed out that the petitioner asserted categorically that the entire turnover is under RCM and that the list of recipients was being enclosed with the reply. He also pointed out that the petitioner handed over some documents physically on account of the voluminous nature of such documents. By thereafter inviting my attention to the impugned order, learned counsel contended that the impugned order is vitiated by non application of mind. Although the petitioner had submitted the balance sheet by way of a physical

copy, learned counsel points out that the order records that the petitioner did not file the balance sheet. Likewise, he submits that the order records that the ITR details were not provided whereas the petitioner submitted the ITR acknowledgment and Forms 26AS and 3CD. Even with regard to details that should have been provided in Table 3.1 (c) of the GSTR-3B return, he points out that such details were uploaded on the GST portal, as is evident from clauses (g) and (k) of paragraph 12 of the reply. He next submitted that the impugned order refers to the balance sheet disclosing other income of Rs.20,05,359/-, but the operative portion of the impugned order confirms the demand raised in the show cause notice.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. On instructions, he submits that the documents that were uploaded were received by the assessing officer, but not the documents referred to in clauses (a) to (f) of the paragraph 12 of the reply. He further submits that the demand was confirmed on account of the fact that the petitioner

did not provide documents with regard to turnover from Tamil Nadu.

4. In the reply, the petitioner categorically asserted that it is supplying services only under RCM and that the recipient of services pays GST in respect thereof. In paragraph 12 of the reply, the petitioner set out the list of documents submitted both physically and by uploading the same on the GST portal. The impugned assessment order should be tested against the above background.

5. In the operative portion of the impugned order, it is recorded as under:

> "*After issue of reminder - 1 the tax payer filed his reply under FORM GST-DRC-06 and stated that as this registered person is GTA the entire Turnover is under RCM which is to be paid by recipient of service, Documents submitted pertaining to the whole company including all India branches and requested personal hearing.*
>
> *As requested by the taxpayer a personal hearing was offered on 21.12.2023 and their representative Mr.Gajendra panda (Branch Manager), Chennai had attended the same and he stated that as this registered person is GTA the entire turnover is under RCM*

which is to be paid by recipient of service only. Further he did not produce any relevant document in respect of tamilnadu branch like P & L, purchase, sales details, balance sheet and ITR details.

It is also observed that on verification of the GSTR-1 Table-8 GSTR-3B Table 3.1 (C) and GSTR-9 Part-II, 5D it is found that the resisted tax payer has not declared their GTA related service turnover in the mentioned tables above.

As the registered tax payer has not proved with the documentary evidence that his entire turnover in Tamil Nadu was related to GTA only. On verification of all india balance sheet it is found that other income was reported amounted to Rs.20,05,359.00 as per Note-8 on which excluding an interest a sum of Rs.284201.30 was declared which is liable for tax @ 18%.

In view of the above, as the tax payer not proved the genuiness of turnover declared and not produced any documentary evidence to substantiate with the official return format required by the TNGST ACT 2017. A show cause notice issued in the reference 3rd cited, is conformed as detailed below:

Determination of Tax, Interest: and penalty. Under section 73 of TNGST ACT.2017

YEAR	*Turnover Difference*	*TAX HEAD*	*TAX*	*INTEREST*	*PENALTY @ 10% of Tax*
2017-2018	*365816000*	*CGST*	*32923440.*	*33738859.*	*3292344.*
		SGST	*32923440.*	*33738859.*	*3292344.*
		TOTAL	*6,58,46,880.*	*6,74,77,718.*	*65,84,688.*

6. Although the petitioner had submitted the balance sheet and ITR details, it is evident from the above extract that the

assessing officer recorded findings contrary to the documents on record. It is also noticeable that in the penultimate paragraph at page 63, the assessing officer notices that the all India balance sheet discloses other income of Rs.20,05,359/-. After noticing such other income, in the concluding table, tax liability with interest and penalty is imposed in respect of the turnover which, according to the petitioner, is taxable entirely on RCM basis. Therefore, the impugned assessment order is undoubtedly vitiated by non application of mind. Hence, such order is not sustainable.

7. For reasons set out above, the impugned assessment order is quashed and the matter is remanded for re-consideration. The petitioner is permitted to re-submit all relevant documents to the assessing officer within ***fifteen days*** 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 of receipt of such documents.

8. W.P.No.6927 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.7725 and 7726 of 2024 are closed.

18.03.2024

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

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2.The State of Tamil Nadu,
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SENTHILKUMAR RAMAMOORTHY,J.

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