IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.7096 of 2024
&
WMP No.7938 of 2024

M/s.Engineering Projects India Ltd.
Represented by its Authorised Signatory,
Shri. A.Gowthaman, Group General Manager,
Southern Regional Office,
3D, EC Chambers,
92, GN Chetty Road,
T.Nagar, Chennai-600 017. ... Petitioner

vs

1. The Additional Commissioner,
Office of Commisioner of GST & Central Excise,
Chennai South Commissioner, MHU Complex,
No.692, 5th Floor, Anna Salai,
Nandanam, Chennai-600 035.

2. The Deputy Commissioner,
Office of Commissioner of GST & Central Excise,
Audit II Commissionrate, MHU Complex,
No.692, 6th Floor, Anna Salai,
Nandnam, Chennai-600 035.

3. The Joint Commissioner,

Office of Commissioner of GST & Central Excise,
Audit II Commissioner, MHU Complex,
No.692, 6th Floor, Anna Salai,
Nandanam, Chennai-600 035. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records of the Respondents and quash the Impugned Order-in-Original No.76/2023-GST-ADC dated 29.12.2023 in File No.C.No.V /15/80/2023-CS-ADJ bearing DIN:20231259TL000000CC28 passed by the 1st Respondent and proceedings emanating from the Impugned Show Cause Notice No.305/2023 dated 27.09.2023 in File No.GADT/TECH/SCN/GST/219/2023-TECH bearing DIN: 2023959XS0000000C11 issued by the 3rd Respondent and consequently direct the Respondents to follow the instructions contained at Para (iv) of the Press Release dated 04.05.2018 issued by the Central Board of Indirect Taxes and Customs.

For Petitioner : Mr.R. Alwan

For Respondents : Mr.Ramesh Kutty
Senior Standing Counsel

ORDER

An assessment order dated 29.12.2023 is assailed primarily on the ground that the assessing officer failed to act in accordance with the mandate under Section 5 of the Central Goods and Services Tax

Act 2017 (the CGST Act) read with press release dated 04.05.2018.

2. Pursuant to audits carried out by the respondents and observations made pursuant thereto, an audit report was issued. Thereafter, an intimation dated 08.09.2023 was issued and such intimation was replied to by the petitioner on 22.09.2023. This was followed by show cause notice dated 27.09.2023, which was replied to by the petitioner on 20.10.2023. The petitioner also submitted a written synopsis on 29.11.2023. Eventually, the impugned assessment order was issued on 29.12.2023.

3. Learned counsel for the petitioner contended that an obligation is imposed on the GST authorities to act in accordance with the mandate of Section 5 of the CGST Act, which enjoins them to function subject to such conditions and limitations as the Board may impose. By further referring to press release dated 04.05.2018, learned counsel contended that the said press release requires that input tax credit should not be reversed automatically merely on the

ground that the seller did not remit taxes. He also refers to and relies upon the judgment of the Division Bench of Calcutta High Court in *Suncraft Energy Private Limited and Another v. The Assistant Commissioner, State Tax, Ballygunge Charg & Others, judgment dated 02.08.2023 in MAT 1218 of 2023.*

4. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice for the respondents.

5. The documents on record evince that principles of natural justice were adhered to not only by providing an opportunity to the petitioner to contest the tax demand, but by also providing a personal hearing to the petitioner. The petitioner responded both to the intimation and show cause and even submitted written synopsis before the assessing officer. The petitioner does not assert that documents submitted by him were disregarded in course of assessment. In these facts and circumstances, no case is made out to exercise discretionary jurisdiction under Article 226 of the

Constitution of India.

6. Therefore, W.P.No.7096 of 2024 is dismissed by leaving it open to the petitioner to avail of the statutory remedy. Consequently, connected miscellaneous petition is closed. No costs.

18.03.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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SENTHILKUMAR RAMAMOORTHY J.

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