IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.7991 of 2024
and W.M.P.No.8967 of 2024

Anbu Agencies
Represented by its Sole Proprietor
Mr.Aravintharaj
D.No.569, Pilaiyar Nagar,
Moolapillaiyar Kovil, Kandmanpatty,
Tamil Nadu 641 604. ... Petitioner

-vs-

The Assistant Commissioner (ST)
Gugai Circle,
Salem - 07. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the Respondent's order bearing REF No: 33BSPPA3419R1ZD / 2020-2021 dated 05.02.2024, and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

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ORDER

An order dated 05.02.2024 in rectification proceedings under Section 161 of the Tamil Nadu Goods and Services Tax Act, 2017 is challenged by this writ petition.

2. In relation to the disparity between the GSTR 1 and GSTR 3B returns of the petitioner, proceedings were initiated by issuing a show cause notice dated 02.11.2022. Such proceedings culminated in assessment order dated 01.02.2023. By asserting that there is an error apparent in the assessment order in as much as the GSTR 3B returns for only two months, namely September and October 2020, were taken into consideration, the petitioner filed rectification petition

dated 10.04.2023. Such petition was rejected by the order impugned herein.

3. Learned counsel for the petitioner referred to the operative portion of the impugned order and pointed out that the petitioner's contention was not duly considered. Therefore, he seeks interference by this Court.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the scope of rectification is limited to correcting errors apparent. He further submits that the petitioner should avail of the appellate remedy against the assessment order.

5. In paragraph 2 of the rectification petition dated 10.04.2023, the petitioner has asserted that if the GSTR 3B returns for assessment period 2020-21 are examined as a whole, the petitioner had paid

excess tax and that there is no shortfall. While rejecting the rectification petition, in relevant part, it was recorded as under:

> "*The submissions made by the taxpayer has been examined carefully and it is overruled. The assessment order has been passed only after proper verification of their objections submitted during the notice period. They had failed to submit proper documental evidences for proof of payment of disputed tax before passing of assessment orders. Now, they had again simply stated that there is no short payment of tax at the end of assessment year, which cannot be accepted and their application is not eligible for rectification as per section 161 of the TNGST Act, 2017, and it ordered to be rejected.*
>
> *Hence, the levy of tax/interest/penalty ordered in the assessment order which was already passed by the Assistant Commissioner (ST), Gugai Circle, with demand ID: ZD330223004676R, Dated: 01.02.2023 stands good without any changes.*"

6. The above extract indicates that the respondent did not consider the above contention of the petitioner to ascertain whether such contention is tenable. For such reason, the impugned order calls for interference.

7. Therefore, the impugned order is set aside and the matter is remanded for re-consideration of the petitioner's rectification petition. After providing a reasonable opportunity to the petitioner, including a personal hearing, a fresh order shall be issued within ***two months*** from the date of receipt of a copy of this order. The petitioner is directed to provide all relevant documents in relation to such re-consideration.

8. W.P.No.7991 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No8967 of 2024 is closed.

27.03.2024

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

To

The Assistant Commissioner (ST)
Gugai Circle,
Salem - 07.

SENTHILKUMAR RAMAMOORTHY,J

rna

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