IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.8661 & 8663 of 2024
and W.M.P.Nos.9646, 9647, 9650 & 9651 of 2024

M/s.Rathna Traders,
Represented by its Partner Mr.S.Ramesh,
No.15/1, Sivan Koil South Mada Street,
Villivakkam, Chennai 600 049. ... Petitioner in both WP's

-vs-

1.The State Tax Officer
Villivakkam Assessment Circle,
No.15 & 16, 100 Feet Road,
Malligai Avenue, Kolathur, Chennai 600 099.

2.The Assistant Commissioner (ST)(FAC),
O/o. The Assistant Commissioner (State Tax),
Villivakkam Assessment Circle,
No.15 & 16, 100 feet Road,
Malligai Avenue, Kolathur,
Chennai 600 099.

3.The State Tax Officer,
Nungambakkam Assessment Circle,
Chennai. ... Respondents in both WP's

PRAYER in W.P.No.8661 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 30.12.2023 issued in GSTIN/33AAAFR5013Q1Z6/2017-18 issued by the first respondent and quash the same.

PRAYER in W.P.No.8663 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned Recovery Notice dated 19.02.2024 issued by the second respondent and quash the same.

For Petitioner in both WP's	:	Mr.Hari Radhakrishnan
For Respondents in both WP's	:	Mr.V.Prashanth Kiran, GA (T)

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COMMON ORDER

An order dated 30.12.2023 is the subject of challenge in this writ petition. An audit of the petitioner's returns was conducted in relation to the assessment periods 2017-18 to 2021-22. In relation thereto, an audit report was issued on 30.09.2023. The petitioner replied to such audit report on 30.10.2023. A show cause notice notice was also issued on the same date when the audit report was issued. Such show cause notice was replied to on 02.11.2023. It was followed by a final notice dated 01.12.2023, which was replied to on 29.12.2023. The impugned order was issued thereafter on 30.12.2023.

2. Learned counsel for the petitioner submits that the audit observations were not placed before the petitioner and that an audit report was issued in contravention of Section 65 of the Tamil Nadu Goods and Services Tax Act read with Rule 101(5) of the rules framed

in relation thereto. He further submits that the contentions raised in the reply dated 29.12.2023 to the final notice were not taken into account while issuing the impugned order. He also submits that no personal hearing was provided after such reply.

3. By referring to the impugned order and, in particular, the findings relating to defect no.2 pertaining to trade receivables, learned counsel submits that the petitioner had provided several documents along with the reply dated 29.12.2023. By referring to page 98 of the typed set, learned counsel submits that the detailed ledger was submitted. He also points out that invoice copies were provided in electronic form. In these circumstances, he submits that the finding recorded in respect of trade receivables at page 112 to the effect that the tax payer had not produced payment details, invoice copy, etc., is untenable. Likewise, by referring to the findings recorded in relation to zero rated supplies without payment of tax, learned counsel submits that the petitioner had enclosed the SEZ

invoice and the letter of undertaking issued by Mr.L.Sudhakar Reddy, Assistant Commissioner, Anna Nagar Division, dated 30.10.2017. He points out that these documents were not taken into consideration while confirming the tax demand on the ground that no supporting documents were produced.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that, by final notice dated 01.12.2023, the petitioner was called upon to reply on or before 08.12.2023 and also appear at a personal hearing on the said date. Instead of adhering to the time limit specified therein, he submits that the petitioner replied on 29.12.2023, which was just before the expiry of the limitation period. In these circumstances, he submits that it was not possible to take into account the petitioner's reply.

5. On examining the impugned order, it appears that a finding was recorded in relation to several defects such as those relating to

zero rated supplies without payment of tax and trade receivables on the ground that documents were not produced by the petitioner. By the reply to final notice dated 29.12.2023, the petitioner appears to have annexed documents in relation to each defect forming the subject of the final notice. Since the reply and the documents annexed thereto were not considered in the impugned order, the said order is not sustainable.

6. Therefore, the assessment order dated 30.12.2023 is set aside and, as a corollary, the recovery notice is quashed and the matter is remanded for re-consideration. The respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within ***two months*** from the date of receipt of a copy of this order.

7. W.P.Nos.8661 and 8663 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9646, 9647, 9650 and 9651 of 2024 are closed.

01.04.2024

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

To

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SENTHILKUMAR RAMAMOORTHY,J

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