



WEB COPY



W.P.No.8817 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8817 of 2024 and
W.M.P.Nos.9819 & 9821 of 2024

Tokyo Zairyo (India) Private Limited,
Represented by its Authorised Signatory,
Mr.Praveen Kumar Gautam,
Kerry Indev, Survey No.144/1/57,
Irungattukottai, B-block,
Sriperumbudur,
Kancheepuram-602 105.

...Petitioner

Vs.

1. Assistant Commissioner,
Sriperumbudur,
Room No.332, Third floor,
Integrated Commercial Taxes and
Registration Building,
Nandanam, Chennai-600 035.

2. Assistant Commissioner (ST),
Korattur Assessment Circle,
Room No.332, Third floor,
Integrated Commercial Taxes and
Registration Building,
Nandanam, Chennai-600 035.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in the file of the



W.P.No.8817 of 2024

respondents and quash the summary of the order in Form GST DRC-07 dated 30.12.2023 passed under Section 73 of the Tamil Nadu Goods and Services Tax Act, 2017 ('TNGST Act')/Central Goods and Services Tax Act, 2017 ('CGST Act') dated 30.12.2023 for the Financial Year ('FY') 2017-2018 both passed by the first respondent and both having Reference Number ZD331223275418F and the order dated 29.12.2023 in GSTIN:33AADCT9123D1ZN/2017-2018 for the Financial Year ('FY') 2017-2018 passed by the 2nd respondent.

For Petitioner : Ms.N.V.Lakshmi

For Respondents : Mr.T.N.C.Kaushik,
Additional Govt. Pleader (T)

ORDER

An assessment order dated 29.12.2023 is challenged on the ground that the petitioner's reply was disregarded. Pursuant to an audit under Section 65 of applicable GST enactments, a show cause notice was issued to the petitioner on 30.09.2023. The petitioner replied to the audit report on 28.11.2023. The impugned order was issued thereafter on 29.12.2023.

2. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the petitioner's reply was disregarded by describing the reply as an unauthorised reply. She further



W.P.No.8817 of 2024

submits that the reply was disregarded merely because the petitioner was unable to attend the scheduled personal hearing.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. He points out that the petitioner failed to produce a separate balance sheet and profit & loss account for the Tamil Nadu branch. In view thereof, he submits that the tax demand was confirmed.

4. On perusal of the impugned order, it is evident that similar findings were recorded in respect of each audit observation dealt with therein. By way of illustration, the finding in respect of audit observation no.1 pertaining to turnover reconciliation is set out below:

The unauthorised reply of the tax payer is not accepted as the tax payer has not appeared for personal hearing to sign the reply or to explain their contention. Moreover, the conclusion of Audit Officer is confirmed.

Thus, it is clear that the petitioner's reply was disregarded by categorising such reply as an unauthorised reply. It is unclear as to why the reply was



W.P.No.8817 of 2024

described as unauthorised. In any event, the impugned order is vitiated by non consideration of the petitioner's reply. Consequently, such order is unsustainable.

5. Hence, the impugned order dated 29.12.2023 is set aside and the matter is remanded for reconsideration. 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. All contentions are left open to the petitioner in course of remanded proceedings.

6. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

02.04.2024

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

kj

To



W.P.No.8817 of 2024

WEB COPY

1. Assistant Commissioner,
Sriperumbudur,
Room No.332, Third floor,
Integrated Commercial Taxes and
Registration Building,
Nandanam, Chennai-600 035.

2. Assistant Commissioner (ST),
Korattur Assessment Circle,
Room No.332, Third floor,
Integrated Commercial Taxes and
Registration Building,
Nandanam, Chennai-600 035.



WEB COPY



W.P.No.8817 of 2024

SENTHILKUMAR RAMAMOORTHY,J.

Kj

W.P.No.8817 of 2024 and
W.M.P.Nos.9819 & 9821 of 2024

02.04.2024