IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.04.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.8702 & 8707 of 2024
&
WMP Nos.9719, 9722, 9728 & 9729 of 2024

In both WPs:

M.Arumugam
Sole Proprietor of Tvl.Ayyanar Traders,
No.44, Perumal Koil Street,
Alapakkam, Chennai-600 118. ... Petitioner

vs

1. Deputy State Tax Officer-I,
   Porur Assessment Circle,
   Poonamallee Zone, Kancheepuram Division,
   Chennai-600 123.

2. The Branch Manager,
   Tamil Nadu Mercantile Bank Ltd.
   Sree Pushpa Comple,
   91, Kamakodi Nagar, Valasaravakkam,
   Tiruvallur-600 087. ... Respondents

PRAYER in W.P.No.8702 of 2024 : Writ Petition filed under Article

226 of the Constitution of India to issue a writ of Certiorari, calling for the records leading to the issuance of assessment order in GSTIN:33AEBPA4302A1ZS dated 28.10.2023 passed by the First Respondent herein and quash the same.

PRAYER in W.P.No.8707 of 2024 : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records leading to the issuance of Bank attachment notice bearing reference GSTIN/33AEBPA4302A1ZS/2023-2024 dated 05.03.2024 by the First Respondent herein to the Second Respondent and quash the same.

In both WPs:

For Petitioner : Ms.Sri Harini S P

For Respondents : Mr.V.Prasanth Kiran
Government Advocate (Taxes)

COMMON ORDER

An assessment order dated 28.10.2023 and a bank attachment notice are challenged in these writ petitions.

2.The petitioner received a notice in Form ASMT 10 dated 05.02.2023 in relation to discrepancy between the GSTR 3B returns of the petitioner and auto-populated GSTR 2A returns. The petitioner states that such notice was replied to on 29.03.2023, but the petitioner erroneously indicated the wrong assessment period, i.e. 2021-22 instead of 2017-18, in the reply. Since the petitioner was under the misconception that such proceedings had been dropped, it is stated that the petitioner did not reply to the show cause notice dated 19.09.2023 or participate in proceedings culminating in the impugned assessment order.

3. Learned counsel for the petitioner submits that the impugned order relates to two issues. The first issue being a tax demand for IGST. On this issue, she submits that the petitioner had received supplies from a SEZ unit and that Rule 36(4) of the applicable rules do not extend to imports made from a SEZ to the domestic tariff area. Consequently, she submits that the tax demand should not have been confirmed with regard to IGST merely on account of mismatch. As regards the discrepancy between the input tax credit claimed in

respect of CGST and SGST, she submits that the petitioner is entitled to the benefit of Circular No.183. On instructions, she submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.Prasanth Kiran, learned Government Advocate, accepts notice for the first respondent. He points out that a personal hearing would have been offered in the summary to the show cause notice which has not been placed on record. He also submits that the petitioner admittedly did not reply to the show cause notice or participate in proceedings.

5. From the petitioner's reply to the notice in Form ASMT 10, it appears that the petitioner had purchased goods from a SEZ unit under bills of entry. The relevant invoices and other documents have been attached to the reply. Since a reply was not submitted to the show cause notice, these facts were not taken into consideration

while issuing the impugned order. In these circumstances, albeit by putting the petitioner on terms, an opportunity should be provided to the petitioner to contest the tax demand.

6. Therefore, the impugned order dated 28.10.2023 is quashed subject to the condition that the petitioner remits 10% of the disputed tax demand within a period of two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the first 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 the petitioner's reply. In view of the assessment order being quashed, the bank attachment notice is also quashed.

7. W.P.Nos.8702 & 8707 of 2024 are disposed of on the above terms and connected miscellaneous petitions are closed. No costs.

01.04.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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Note: Issue order copy on 01.04.2024

To

1. Deputy State Tax Officer-I,
   Porur Assessment Circle,
   Poonamallee Zone, Kancheepuram Division,
   Chennai-600 123.

2. The Branch Manager,
   Tamil Nadu Mercantile Bank Ltd.
   Sree Pushpa Comple,
   91, Kamakodi Nagar, Valasaravakkam,
   Tiruvallur-600 087.

SENTHILKUMAR RAMAMOORTHY J.

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