IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.8847 of 2024
and W.M.P.Nos.9843 & 9844 of 2024

M/s.Nakoda Unique Gold Private Limited
Represented by its Director,
No.77, N.S.C. Bose Road, 'Gold Square',
1st Floor, Sowcarpet, Chennai 600 006. ... Petitioner

-vs-

The Assistant Commissioner (ST)
Mooremarket Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the respondent in Order dated 22.08.2023 in GSTIN 33AACCN3049F1ZT/2018-19 and quash the same as illegal, arbitrary and in violation of principle of natural justice.

For Petitioner : Ms.C.Rekhakumari

For Respondent : Mr.V.Prashanth Kiran, GA (T)

****

ORDER

An assessment order dated 22.08.2023 is challenged in this writ petition primarily on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand. A show cause notice dated 05.05.2023 was issued to the petitioner in respect of discrepancies between the petitioner's GSTR 3B returns and the auto populated GSTR 2A. The petitioner did not reply thereto since the notice was uploaded on the "view additional notices and order" tab of the GST portal. The impugned order was issued thereafter on 22.08.2023.

2. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the total tax liability, as per the impugned order, of about Rs.10,41,656/- was appropriated partly from the petitioner's bank account in the SBI and partly from the electronic credit ledger of the petitioner. Since the amount appropriated exceeds the tax liability and represents more than 60% of the total demand, including interest and penalty, learned counsel submits that the petitioner be provided an opportunity to contest the tax demand on merits.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. On instructions, he confirms appropriation of a sum of Rs.4,78,854/-. However, he submits that he has no instructions with regard to the recovery made from the electronic credit ledger of the petitioner.

4. The petitioner asserts that the discrepancy occurred on account of the petitioner specifying the amount under the row relating to "all other ITC" instead of the row relating to "import of goods". In paragraph 3 of the affidavit, the petitioner has set out details of amounts appropriated either from the attached bank account or from the electronic credit ledger. The relevant page from the electronic credit ledger has also been placed on record. When the above facts and circumstances are taken into account, it is just and necessary that the petitioner be provided an opportunity to contest the tax demand on merits.

5. Therefore, the impugned order is set aside and the matter is remanded for re-consideration. The petitioner is permitted to submit a reply to the show cause notice within ***fifteen days*** from the date of receipt of a copy of this order. Upon receipt thereof, 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 the petitioner's reply. It is made clear that all amounts appropriated towards the tax demand shall abide by the outcome of the remanded proceedings.

6. W.P.No.8847 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9843 and 9844 of 2024 are closed.

03.04.2024

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

To

The Assistant Commissioner (ST)
Mooremarket Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai 600 003.

<u>SENTHILKUMAR RAMAMOORTHY,J</u>

rna

<u>W.P.No.8847 of 2024</u>
<u>and W.M.P.Nos.9843 & 9844 of 2024</u>

03.04.2024