IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.04.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.8837 of 2024
&
WMP Nos.9837 & 3838 of 2024

M/s.Sarvagya Infrastructure Pvt. Ltd.
Represented by its Managing Director
Shri. S.Prabhakar
Old No.27, New No.38, Madley Road,
T.Nagar, Chennai – 600 017. ... Petitioner

vs

The Assistant Commissioner (ST),
Nandanam Assessment Circle,
Integrated Commercial Taxes Building,
Nandanam, Chennai-600 035. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari and calling for the records pertaining to the impugned order and consequential order in Form GST DRC-07 both dated 30.11.2022 issued by the Respondent in Reference no.ZD3311220973240 and quash the same.

For Petitioner : Mr.Derrick Sam
Ms.Deepika Chopda

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

ORDER

An order dated 30.11.2022 under Section 62 of the Tamil Nadu Goods and Services Tax Act, 2017 (the TNGST Act) is challenged.

2. Proceedings were initiated against the petitioner for non-filing of the GSTR 3B return for the month of August, 2022. The impugned order dated 30.11.2022 was issued under Section 62 of applicable GST enactments in respect thereof. Learned counsel for the petitioner referred to the impugned order and pointed out that the order relates to August 2022. By further submitting that the order was issued on 30.11.2022, learned counsel submits that the petitioner's GST registration was cancelled with effect from 31.07.2022. Once the GST registration was cancelled with effect from July 2022, he contends that the assessment order under Section 62 becomes unsustainable inasmuch as the said provision applies only if a registered person fails to file returns.

3. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the registration was cancelled only on 28.11.2022 and that the petitioner was in a position to file returns for the month of August 2022. He further submits that the assessment order was made on best judgment basis because the petitioner continued to carry on business during the relevant period.

4. The impugned order was issued on 30.11.2022. By that time, the order of cancellation was issued and such order took effect from 31.07.2022. On perusal of the impugned assessment order, it is evident that liability was imposed entirely on the basis of the petitioner's turnover for the month of March 2022 as per the GSTR 3B return. Learned counsel for the petitioner points out that 12.5% of the disputed tax demand was remitted when the petitioner endeavoured to avail of an amnesty scheme for filing of appeals.

5. Since liability was imposed on the petitioner entirely on the basis of the petitioner's turnover of March 2022 and the petitioner

asserts that no business was carried on in August 2022, it is just and necessary that the petitioner be provided an opportunity to contest the tax demand.

6. Solely for such reason, the impugned order dated 30.11.2022 is set aside and the matter is remanded for reconsideration. Upon the respondent being satisfied that 12.5% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of two months from the date of receipt of a copy of this order.

7. W.P.No.8837 of 2024 is disposed of on the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

02.04.2024
(2/2)

Index : Yes/No
Internet : Yes/No

Neutral Citation : Yes/No

To

The Assistant Commissioner (ST),
Nandanam Assessment Circle,
Integrated Commercial Taxes Building,
Nandanam, Chennai-600 035.

SENTHILKUMAR RAMAMOORTHY J.

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