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W.P.No.9073 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9073 of 2024
and W.M.P.Nos.10086 & 10087 of 2024

M/s.GG Organics Care Private Limited,
Represented by its Director,
Mrs.R.Kavitha,
D/o.Mr.Ramachandran,
GG Organics Care Private Limited,
10, Akkeswarar Colony,
Chromepet, Chennai-600 044.

...Petitioner

Vs.

1.The State Tax Officer,
Chromepet Assessment Circle,
Integrated Commercial Tax Building (South Tower),
Room No.335, 3rd floor,
Block number 19, T.S.No.2,
Government Farm Village,
Nandanam, Chennai-600 035.

2.The Assistant Commissioner (ST),
Royapettah Assessment Circle,
Room No.206, Second Floor, South Tower,
Nandanam, Chennai-600 035.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in order under Section 73 of the TNGST Act, 2017 bearing Reference No.ZD331223179512M dated 22.12.2023 along with a summary of the order dated 22.12.2023 on the file of the 1st respondent for the period July 2017 to March 2018 and quash the same and further direct the 1st respondent to initiate a fresh proceedings according to the provisions of the TNGST Act, 2017.

For Petitioner : Mr.I.Dinesh
for Mr.G.Baskar

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader (T)

ORDER

An order dated 22.12.2023 is the subject of challenge in this writ petition.

2. The petitioner's parent company, GG Organics Private Limited, was engaged in the business of manufacture of leather speciality chemicals. The entity also had a manufacturing facility in Sriperumpudhur to undertake business in consumer goods. By way of a demerger, the assets and liabilities of the consumer division were transferred to a new entity, GG Organics Care Private Limited, i.e. the



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petitioner herein. Pursuant to an audit and the issuance of audit report dated 25.09.2023, proceedings were initiated against the petitioner. In this regard, a show cause notice was issued on 25.09.2023 and the impugned order on 22.12.2023.

3. Learned counsel for the petitioner assails the impugned order on the ground that the audit was not conducted in accordance with sub-section (4) of Section 65 of applicable GST enactments. In particular, he submits that such audit was required to be concluded within three months from the date of commencement thereof unless extended in accordance with the proviso to sub-section (4). In this regard, he submits that the audit commenced on 16.05.2023 and was concluded on 18.08.2023, which is beyond the three month period. His next contention is that the reply in relation to audit slip no.7, which pertains to the non filing of Form ITC-02, was not duly considered while issuing the impugned order. By referring to the impugned order in this regard, he submits that the petitioner had explained that there was no transfer of Input Tax Credit (ITC) to the consumer division and that, therefore, it was not necessary to file Form ITC-02.



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4. On instructions, learned counsel for the petitioner submits that the petitioner is willing to remit about 10% of the disputed tax demand as a condition for remand.

5. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. At the outset, he submits that it is too late for the petitioner to complain about the manner in which the audit was conducted. He points out that the audit report was made available to the petitioner in September 2023 and that the petitioner proceeded to participate in the assessment proceedings without raising any objection with regard to the duration of the audit. As regards non submission of Form ITC-02, he submits that the petitioner was liable to submit a nil return if no ITC was transferred to the consumer division.

6. The contention of the petitioner that the duration of audit exceeded the time limit specified in sub-section (4) of Section 65 of applicable GST enactments cannot be countenanced at this juncture. It should also be noticed in this connection that the explanation to sub-section (4) provides that the date of commencement of audit would be



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the date on which records and other documents called for by the tax authorities were made available by the registered person. It is unclear from the documents on record as to when all the documents called for in GST ADT-01 were provided by the petitioner. As regards the contention relating to non filing of ITC-02, the petitioner's contention is that no ITC was availed of by the consumer division and that there was no transfer thereof as a consequence. It is just and necessary to provide another opportunity to the petitioner to place all relevant documents on record in this connection to effectively contest the tax demand. However, it is also necessary to protect revenue interest while remanding the matter for reconsideration.

7. For reasons set out above, the impugned order dated 22.12.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. Upon being satisfied that 10% of the disputed tax demand was received, the 1st 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 remittance of 10%



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of the disputed tax demand. Meanwhile, it is open to the petitioner to file

Form ITC-02 in accordance with the procedure prescribed in such regard.

8. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.04.2024

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

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To

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