IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.04.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.8848 of 2024
&
W.M.P.Nos.9847 & 9850 of 2024

M/s.MSR Engineering Company,
Rep. By its Partner Mr.M.Jagadesh Babu,
No.28/8, Errabalu Street,
Parrys, Chennai-600 001. ... Petitioner

-vs-

The Assistant Commissioner (ST)FAC),
Harbour Assessment Circle,
Integrated Commercial Taxes Office Complex,
Room No.327, 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 impugned proceedings of the respondent in GSTIN:33AALFM94281ZP/2017-18 dated 26.12.2023 and Form DRC-07 in Reference No:ZD3312232093800 dated 26.12.2023 under TNGST Act 2017 and quash the same.

For Petitioner : Mr.M.Hariharan

For Respondent : Mrs.K.Vasanthamala,
Government Advocate (Taxes)

ORDER

An order dated 26.12.2023 is the subject of challenge in this writ petition.

2. Upon scrutiny of returns filed by the petitioner, two notices in Form ASMT-10 were issued to the petitioner. The first notice pertains to discrepancies between the GSTR 3B return of the petitioner and the GSTR 1 statement. The second notice pertains to discrepancies arising out of alleged RCM supplies. The petitioner replied to the notice pertaining to the discrepancy between the GSTR 3B return and GSTR 1 statement on 07.10.2023. In the said reply, the petitioner explained that the discrepancy is on account of not taking into consideration credit notes for a total sum of Rs.1,94,948/-. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the respondent treated the reply dated 07.10.2023 as a reply in relation to the RCM issue. As a

consequence of such confusion, he submits that the respondent recorded that the taxpayer's reply is completely irrelevant. As regards the RCM issue, learned counsel relied upon a communication from the petitioner's supplier to the petitioner wherein the supplier stated that an error was committed while making entries in the GSTR 1 statement in December 2017 inasmuch as the supplier erroneously selected "YES" in the RCM column. Learned counsel also pointed out that an amended return was filed by such supplier.

4. Mrs.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She submits that the petitioner did not reply with regard to the RCM issue. She also points out that the letter from the petitioner's supplier is subsequent to the impugned order.

5. The petitioner's reply dated 07.10.2023 indicates clearly that it pertains to the mismatch between the GSTR 1 and GSTR 3B returns on account of not taking into consideration credit notes of the value of Rs.1,94,948/-. In the impugned order, while dealing with the RCM

issue, the aforesaid reply was taken into account and, consequently, the following finding was recorded:

> "***Observation of the proper officer:***
>
> *The taxpayers have not paid the RCM based on auto populated invoice in GSTR-2A. A detailed show cause notice was issued to them. They have filed reply but not paid RCM. Personal hearing was also issued to them even then they have not discharged the liability on RCM auto populated in GSTR-2A. But the taxpayer reply is related to credit notes which is completely irrelevant. Hence the proposal is confirmed along with interest and penalty."*

Since the above finding was recorded by conflating a reply in respect of the credit notes with the RCM issue, the order calls for interference. Even otherwise, the petitioner has also placed on record a subsequent communication from the supplier to the effect that the error committed while making entries in the said supplier's GSTR 1 was subsequently rectified. In these facts and circumstances, the impugned order is not sustainable.

6. Therefore, the impugned order dated 26.12.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to file a reply to the RCM issue within two weeks 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 reply from the petitioner.

7. W.P.No.8848 of 2024 is disposed of on the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

02.04.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

The Assistant Commissioner (ST)FAC),
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Integrated Commercial Taxes Office Complex,
Room No.327, Elephant Gate Bridge Road,
Chennai-600 003.

SENTHILKUMAR RAMAMOORTHY J.

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