IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.9309 of 2024**
**and W.M.P.No.10327 of 2024**

M/s.Dharani Sugars and Chemicals Limited
No.57, PGP House, Sterling Road,
Nungambakkam, Chennai,
Tamil Nadu 600 034
Represented by its Resolution Professional
Mr.CA Mahalingam Suresh Kumar ... Petitioner

-vs-

The Assistant Commissioner of GST & Central Excise,
Nungambakkam Division,
No.26/1, 5th Floor, Annexe Building,
Mahatma Gandhi Road,
Chennai 600 034. ... Respondent

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records in Order in Original No.83/2023 in the files of the respondent quashing the impugned order dated 22.12.2023 as void ab initio, without jurisdiction, arbitrary, and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and direction permitting the petitioner to file refund application in terms of Issue-D (supra) clarifying that time-bar would not be application on the same.

For Petitioner : Mr.M.Narasimha Bharathi

For Respondent : Mr.Ramesh Kutty

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**ORDER**

An order in original dated 22.12.2023 is the subject of challenge in this writ petition. The petitioner is a company under liquidation under the Insolvency and Bankruptcy Code, 2016. The said entity had transitioned input tax credit from the erstwhile regime to the GST regime by filing Form GST TRAN-1 dated 24.08.2017 under Section 140 of the Central Goods and Services Tax Act, 2017 (the CGST Act). By issuing show cause notice dated 23.03.2021, the petitioner was called upon to show cause as to why the Input Tax

Credit availed of by the petitioner should not be reversed. The petitioner replied thereto on 19.04.2021. The impugned order was issued thereafter on 22.12.2023.

2. Learned counsel for the petitioner assails the order on the ground that Explanation 3 to Section 140 of the CGST Act was applied retrospectively to sub-section (1) thereof. He contends that Explanation 3 is not applicable to sub-section (1). In support of this proposition, he relies upon the judgment of the Bombay High Court in *Godrej & Boyce MFG. Co. Ltd. v. Union of India and others (2022)98 GSTR 103 (Bombay)*. He also relies upon an interim order of the Division Bench of this Court dated 09.08.2023 in W.P.Nos.17727 and 17728 of 2022.

3. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice on behalf of the respondent. By referring to the impugned order, learned senior standing counsel points out that a personal

hearing was fixed on 20.12.2023 and that the petitioner herein did not attend the personal hearing and instead called upon the respondent to submit a claim in view of the pending liquidation proceedings. He also referred to the relevant letter dated 18.12.2023 in this regard.

4. Upon considering the above submissions, it is clear that the impugned order was issued without hearing the petitioner and without considering the contentions advanced before this Court by learned counsel for the petitioner. Solely with a view to provide another opportunity to the petitioner to canvass these contentions before the original authority, the order impugned herein calls for interference.

5. Therefore, impugned order dated 22.12.2023 is set aside and the matter is remanded to the original authority for re-consideration. 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 a copy of this order.

6. W.P.No.9309 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.10327 of 2024 is closed.

**08.04.2024**

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

**To**

The Assistant Commissioner of GST & Central Excise,
Nungambakkam Division,
No.26/1, 5th Floor, Annexe Building,
Mahatma Gandhi Road,
Chennai 600 034.

**SENTHILKUMAR RAMAMOORTHY,J**

rna

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