IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.04.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.9613 of 2024
and
W.M.P.Nos.10642 & 10644 of 2024

Tvl.Vijay Aqua Pipes Pvt. Ltd.
Rep. By its Authorized Signatory
No.1, 1st Floor,
1st Link Street, Raghavan Colony,
Jaferkkanpet
Chennai-600 083. ... Petitioner

-vs-

Assistant Commissioner (ST)(FAC)
Saidapet Assessment Circle
#1, PAPJM Buildings (Annex)
5th Floor, Greams Road,
Chennai-600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the entire records relating to the order in Reference No.D331223260904L dated 29.12.2023 passed by the Respondent and quash the same.

For Petitioner : Mr.T.Ramesh

For Respondents : Mrs.K.Vasanthamala
Government Advocate (Taxes)

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ORDER

An order dated 28.12.2023 is challenged on the ground that principles of natural justice were not complied with.

2. The petitioner was engaged in the manufacture of rigid PVC pipes. As a registered dealer under erstwhile tax statutes, the petitioner asserts that it was entitled to cenvat credit and that such credit was transitioned to the GST regime by filing Form TRAN I. On account of closure of business, the petitioner asserts that it was unaware of proceedings culminating in the impugned order.

3. Learned counsel for the petitioner invited my attention to the impugned order and submitted that the respondent does not have the authority or jurisdiction to question the petitioner's eligibility for cenvat credit under the Central Excise Act. He submits

that the eligibility of the petitioner for cenvat credit was not questioned by appropriate authorities under the erstwhile regime and that, consequently, the respondent herein has no jurisdiction to do so. If provided an opportunity, he submits that these contentions would be raised before the respondent.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. By referring to the impugned order, she points out that the show cause notice was followed by personal hearing notice dated 14.12.2023. By placing on record a subsequent reminder dated 16.12.2023 for personal hearing on 20.12.2023, she submits that principles of natural justice were complied with.

5. The petitioner appears to be a registered person under applicable GST enactments as on date. As a registered person, the petitioner is under an obligation to monitor the GST portal on an ongoing basis. The present state of affairs has transpired on account

of the petitioner not monitoring the GST portal and responding to the show cause notice and hearing notices. At the same time, it should be noticed that transitional credit was reversed under the impugned order without hearing the petitioner. Learned counsel for the petitioner contends that the respondent did not have the authority to question eligibility when the same was not questioned under the erstwhile regime when the petitioner availed of cenvat credit. It is, therefore, just and necessary to provide an opportunity to the petitioner to contest the tax demand, albeit by putting the petitioner on terms.

6. Therefore, the impugned order dated 29.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand within three weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% 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 two months from the date of receipt of the petitioner's reply.

7. W.P.No.9613 of 2024 is disposed of on the above terms and connected miscellaneous petitions are closed. No costs.

10.04.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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<u>SENTHILKUMAR RAMAMOORTHY,J</u>

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To

Assistant Commissioner (ST)(FAC)
Saidapet Assessment Circle
#1, PAPJM Buildings (Annex)
5th Floor, Greams Road,
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