IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.9741 of 2024
and W.M.P.Nos.10779 & 10780 of 2024

M/s.Indian Additives Ltd.,
(Represented by its Company Secretary Mr.N.V.Sivaram)
265, Express Highway, Manali,
Chennai 600 068. ... Petitioner

-vs-

The Assistant Commissioner (ST)
Manali Assessment Circle, Zone III
Integrated Commercial Taxes Office Complex,
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 respondent in the impugned order Reference No. ZD3312232948572 dated 31.12.2023 and quash the same as it has been passed in violation of principles of natural justice.

For Petitioner : M/s.Sharanya Vijay.K
for K.Vaitheeswaran

For Respondent : Mrs.K.Vasanthamala, GA (T)

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ORDER

An order dated 31.12.2023 is assailed on the ground of denial of reasonable opportunity to contest the tax demand on merits.

2. Upon receipt of show cause notice dated 07.06.2023 in relation to alleged non reversal of Input Tax Credit upon issuance of credit notes by the supplier concerned, the petitioner replied on 07.08.2023. After issuing personal hearing notice dated 29.12.2023 for a personal hearing on 30.12.2023, the order impugned herein was issued on 31.12.2023.

3. Learned counsel for the petitioner invited my attention to the reply dated 06.08.2023 and pointed out that objections were raised both on maintainability and on merits. By referring to reminder dated 29.12.2023, she points out that the personal hearing was fixed on the very next date, thereby depriving the petitioner of a meaningful opportunity. She also points out that the reply of the petitioner was not duly taken into account in the impugned order.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that the petitioner had sufficient time after issuing reply dated 07.08.2023 to request for and participate in a personal hearing. Instead, she submits that the petitioner failed to take any steps and did not attend the personal hearing on 30.12.2023.

5. The petitioner has placed on record reply dated 07.08.2023.

On perusal thereof, it appears that objections were raised on the ground of maintainability by referring to several precedents. On the merits, the petitioner asserted that Input Tax Credit was reversed with regard to credit notes issued to the petitioner. Other legal submissions in relation to the reversal of Input Tax Credit were also set out in the petitioner's reply. The operative portion of the impugned order is as under:

> "***In reply to the Notice, the Taxpayer has filed reply dated 05.07.2023 and*** *an opportunity of personal hearing was also provided to the Taxpayer, which the Taxpayer on 29.12.2023 and th Taxpayer has failed to utilize the same. Further, the reply filed by the Taxpayer has been verified and found that the Taxpayer has failed to explain the content that they have not reversed the ITC as detailed above for the Credit notes received in GST2A. Therefore, the reply filed by the Taxpayer is rejected on merits of the ground that they have not proved their contention with supporting documents for payment / reversal of ITC for the value received in Credit Notes of GSTR2A.*"

6. The above extract discloses that the respondent rejected the petitioner's reply on the ground that the petitioner had not proved its contention regarding reversal of Input Tax Credit with supporting

documents. In light of the fact that the impugned order was issued within two days from the date of issuance of the personal hearing notice, it is evident that a reasonable opportunity was not provided to the petitioner.

7. Therefore, impugned order dated 31.12.2023 is set aside and the matter is remanded 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.

8. W.P.No.9741 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.10779 and 10780 of 2024 are closed.

15.04.2024

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

SENTHILKUMAR RAMAMOORTHY,J

rna

To

The Assistant Commissioner (ST)
Manali Assessment Circle, Zone III
Integrated Commercial Taxes Office Complex,
Chennai 600 003.

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