IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.9835 of 2024
and W.M.P.Nos.10861 & 10862 of 2024

M/s.Prince Foundations Limited
(Represented by its Director,
Shri.Ashwinkumar Kantilal Kamdar)
New No.61 / Old No.17
Prince Corporate Office, Ormes Road
Kilpauk, Chennai 600 010. ... Petitioner

-vs-

Assistant Commissioner (ST)(FAC)
Kilpauk Assessment Circle,
3rd Floor, F-50, First Avenue
Anna Nagar,
Chennai 600 102. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to passing of the impugned order bearing reference number GSTIN 33AADCP2836M1ZA/2017-18 dated 26.12.2023 passed by the respondent and quash the same as the same being arbitrary, without authority of law and passed in violation of the principles of natural justice.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

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ORDER

An Order-in-Original dated 26.12.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. Show cause notice dated 29.09.2023 was issued to the petitioner in respect of unreconciled turnover of about Rs.58,34,25,862.65/-. The petitioner asserts that it was unable to respond to such show cause notice or participate in proceedings on account of the initiation of proceedings against the petitioner by its creditor under the SARFEASI Act. The order impugned herein was issued in the said facts and circumstances on 26.12.2023.

2. Learned counsel for the petitioner invited my attention to the annual return of the petitioner and the reconciliation statement in Form GSTR 9C. He pointed out that the unreconciled turnover of Rs.58,34,25,862.65/- is on account of four items which are not liable for GST, such as sale of flats of the aggregate value of Rs.62,44,44,153/-; profit on sale of investment of Rs.45,30,627/-, etc. He also submits that requisite documents such as the completion certificates evidencing completion of construction of flats prior to the entry into force of applicable GST enactments are available with the petitioner. Therefore, learned counsel contends that the petitioner would be in a position to satisfactorily explain the unreconciled turnover if an opportunity is provided. On instructions, he submits that the petitioner is willing to remit Rs.50,00,000/- as a condition for remand.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. By drawing reference to the

impugned order, he points out that principles of natural justice were complied with by issuing show cause notice dated 29.09.2023 and two reminders thereafter on 17.11.2023 and 14.12.2023.

4. On perusal of the impugned order, it is evident that the tax proposal pertains to unreconciled turnover and that the respondent took note of the reconciliation statement. Since the petitioner did not respond to the show cause notice, it appears that the tax proposal was confirmed. Learned counsel for the petitioner points out that all necessary documents are available with the petitioner to explain the unreconciled turnover. In these circumstances, it is just and necessary to provide another opportunity to the petitioner in this regard. However, since the petitioner failed to respond to notices or participate in proceedings, the petitioner should be put on terms.

5. Therefore, impugned order dated 26.12.2023 is set aside on condition that the petitioner remits a sum of Rs.50,00,000/- within ***three weeks*** from the date of receipt of a copy of this order. Within the said period, the petitioner is also permitted to submit a reply to

the show cause notice by enclosing all relevant documents. Upon receipt of the petitioner's reply and upon being satisfied that a sum of Rs.50,00,000/- 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.

6. W.P.No.9835 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.10861 and 10862 of 2024 are closed.

17.04.2024

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

SENTHILKUMAR RAMAMOORTHY,J

rna

To

Assistant Commissioner (ST)(FAC)
Kilpauk Assessment Circle,
3rd Floor, F-50, First Avenue
Anna Nagar,
Chennai 600 102.

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