IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.04.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.11175 of 2024
and W.M.P.Nos.12248 & 12249 of 2024

M/s.Imperial Shipping Service,
Represented by its Partner,
No.2/3, 3rd North Beach Road,
Chennai-600 001. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Muthialpet Assessment Circle,
Elephant Gate Bridge Road,
Chennai-600 003. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in order dated 20.11.2023 in GSTN 33AAAF11452L1ZM/2017-2018 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Petitioner : Ms.C.Rekhakumari

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

ORDER

An order in original dated 20.11.2023 is challenged in this writ petition.

2. Upon scrutiny of the petitioner's returns, a notice in Form GST ASMT 10 was issued to the petitioner on 20.04.2023. The petitioner replied thereto on 25.05.2023. By asserting that the subsequent notice was not brought to the notice of the petitioner by the accountant concerned, the petitioner states that he was unable to respond to the show cause notice or participate in proceedings. The impugned order was issued in the above facts and circumstances.

3. Learned counsel for the petitioner referred to the notice in Form ASMT 10 and the reply thereto. By pointing out that the tax proposal pertains to alleged non reversal of Input Tax Credit (ITC) in respect of credit notes issued by the supplier, learned counsel submitted that only the net value of ITC, after reducing therefrom the value of the credits notes, was reflected in the "All Other ITC" column. She further submits that this was

also duly reflected in the annual return filed by the petitioner. Although the petitioner did not respond to the show cause notice, learned counsel contends that the reply in Form ASMT 11 should have been taken into account.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the tax proposal was confirmed since the petitioner failed to reverse the ITC and also did not reply to the show cause notice.

5. On perusal of the impugned order, it is noticeable that the notice in Form ASMT 10 is recorded therein. However, the reply of the petitioner thereto was not taken into account. Consequently, as is evident from paragraph 12 of the impugned order, the tax proposal was confirmed on the ground that the petitioner did not respond to the notices or attend personal hearing. Since the petitioner's reply to the notice in Form ASMT 10 was not taken into consideration in the impugned order, such order is unsustainable.

6. For reasons set out above, the impugned order dated 20.11.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice within 15 days 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 a period of three months from the date of receipt of the petitioner's reply.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

29.04.2024

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

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To

The Assistant Commissioner (ST),
Muthialpet Assessment Circle,
Elephant Gate Bridge Road,
Chennai-600 003.

SENTHILKUMAR RAMAMOORTHY,J

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