IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 04.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.11949 of 2024
and W.M.P.Nos.13035, 13036 & 13037 of 2024

M/s.B K T Spin Dish Private Limited,
Represented by its Directorate
Shri.K.Suresh Reddy
No.F 74, NA, SIPCOT Industrial Estate,
Gummidipoondi Taluk, Tiruvallur,
Tamil Nadu 601 201. ... Petitioner

-vs-

1.The State Tax Officer,
Gummidipoondi Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai 600 003.

2.The Assistant Commissioner (ST),
Gummidipoondi Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned order dated 27.09.2023 in GSTIN 33AABCB8614P1ZG/2017-18 and consequential order under section 74 and summary of the order in Form GST DRC – 07 having Reference No. ZD330923200098Lall dated 27.09.2023 for the tax period July 2017 to March 2018 relating to Financial Year (FY) 2017-18 issued by the 1st respondent and quash the same.

For Petitioner : Mr.T.V.Muthu Abirami

For Respondents : Mr.C.Harsha Raj, AGP (T)

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ORDER

An order in original dated 27.09.2023 is challenged on the ground of denial of a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that it was unaware of proceedings culminating in the impugned order until receipt of information regarding the attachment of the petitioner's bank account in March 2024. The reason for not being aware is that the notice and orders were uploaded on the "view additional notices and order tab of the GST portal" and not communicated to the petitioner through any other mode.

2. Learned counsel for the petitioner submits that Input Tax Credit (ITC) was reversed under the impugned order merely by recording by the supplier is non existent, whereas the petitioner has the invoices issued by the supplier, proof of payment and other documents. If provided an opportunity, learned counsel submits that the petitioner would be in a position to satisfy the tax authorities that the petitioner had availed of eligible ITC. On instructions, she submits that the petitioner is ready to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. He points out that the impugned order was preceded not only by a notice in Form ASMT 10 and a show cause notice, but also by personal hearing opportunities.

4. On perusal of the impugned order, it is evident that the tax proposal pertained exclusively to supplies received from Kiran Distributors. The petitioner has placed on record copies of relevant invoices issued by the said supplier, the bank statement relating to payments made to such supplier and the relevant ledger account. In these circumstances, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits, albeit by putting the petitioner on terms.

5. For reasons set out above, impugned order dated 27.09.2023 is set aside on condition that the petitioner remits 10% of the

disputed tax demand as agreed to within a maximum period of ***two 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. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand was received, the first 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. In view of the assessment order being set aside, the bank attachment stands raised.

6. W.P.No.11949 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.13035, 13036 and 13037 of 2024 are closed.

04.06.2024

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Index : Yes / No
Internet : Yes / No

Neutral Citation: Yes / No

To

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SENTHILKUMAR RAMAMOORTHY,J

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