IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.12093, 12099 & 12102 of 2024 and
W.M.P.Nos.13183, 13185, 13193, 13195, 13197 & 13198 of 2024

Elite Natural Private Limited
Represented by its Chief Executive Officer
C.G.Prathibasmidan,
Plot No.21, SIPCOT Industrial Complex,
Phase II, Hosur-635 109. ... Petitioner in all WPs.

-vs-

The State Tax Officer,
Intelligence, Hosur. ... Respondent in all WPs.

Prayer in W.P.No.12093 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the respondent in GSTIN:33AAACE8668B1ZT/2019-2020 dated 13.03.2024 and quash the same.

Prayer in W.P.No.12099 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the respondent in GSTIN:33AAACE8668B1ZT/2021-2022 dated 14.03.2024 and quash the same.

Prayer in W.P.No.12102 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the respondent in GSTIN:33AAACE8668B1ZT/2020-2021 dated 13.03.2024 and quash the same.

In all WPs.

For Petitioner : Mr.K.A.Parthasarathy

For Respondent : Mr.V.Prashanth Kiran, Govt. Adv. (T)

COMMON ORDER

These three writ petitions are directed against orders in original pertaining to assessment periods 2019-2020, 2020-2021 and 2021-2022, respectively. Upon receipt of show cause notices dated 09.12.2023, the petitioner asserts that it replied on 04.01.2024 and dealt with the four tax proposals. The orders impugned herein were issued after offering personal hearing to the petitioner.

2. Learned counsel for the petitioner submits that tax proposals were

made under four heads. By referring to the reply dated 04.01.2024, learned counsel submits that the petitioner explained that excess Input Tax Credit (ITC) was not availed of and that table 8A of the annual return of the petitioner discloses the availability of a greater ITC balance than that availed of. As regards the alleged non reversal of ITC with regard to receipt of credit notes, he submits that the petitioner pointed out that the credit notes were taken into consideration and that only net ITC was availed of. As regards the tax proposal relating to selling and distribution expenses, which constitutes the pre-dominant portion of the total tax demand, he submits that it was pointed out that these were expenses incurred by the petitioner and do not qualify as being taxable under applicable GST enactments. He also pointed out that each line item pertaining to selling and distribution expenses was explained. With regard to the last head relating to imposition of GST on reverse charge mechanism basis, he pointed out that the petitioner informed the assessing officer that these items fall within the forward charge mechanism and not the reverse charge mechanism. By inviting my attention to the impugned order and the findings on each of these aspects, learned counsel submitted that the respondent referred to the reply and concluded that such reply is not satisfactory and is not being accepted. Hence learned counsel submits that the impugned orders warrant reconsideration.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. By referring to the orders impugned herein, he points out that there is no reference therein to the reply dated 04.01.2024. He further submits that the respondent recorded in the impugned order that supporting documents were not received from the petitioner.

4. On perusal of the reply dated 04.01.2024, it is noticeable that the petitioner has stated as under with regard to the alleged mismatch between GSTR 2A on the one hand, and GSTR 9 and 3B on the other:

> *"3.It is submitted that as per the above reconciliation, there is no excess availment of tax but higher ITC balance available in 8A of GSTR 9."*

The finding recorded in the impugned orders with regard to the above issues as under:

> *"The tax payer has submitted reply letter. The reply was not satisfied. They have not submitted valid supporting documents for the above defect. The objection filed by the taxable person has been examined carefully as per provision of the TNGST Act-2017. The contention raised by the taxable person has not acceptable."*

With regard to the selling and distribution expenses, in reply dated 04.01.2024, the petitioner stated as under:

> *"11. The notice fails to inform under which provision of GST Act the sales promotion expenses are taxable in our hands, especially considering the fact that it is an "expense" and not an "income." "*

The finding recorded in this regard is as under:

> *"The tax payer has submitted reply letter. The reply was not satisfied. They have not submitted valid supporting documents for the above defect. The objection filed by the taxable person has been examined carefully as per provision of the TNGST Act-2017. The contention raised by the taxable person has not acceptable."*

5. The above illustrations from the reply of the petitioner and the

impugned order clearly indicate the complete failure of the respondent to engage with the submissions of the petitioner and record reasons in rejecting such submissions. Since findings were recorded without indicating any reasons for such findings, these orders cannot be sustained.

6. Hence, orders impugned in these writ petitions are set aside and these matters are remanded for reconsideration. The petitioner is permitted to submit additional documents, if any, 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 fresh reasoned orders within a period of three months from the date of receipt of a copy of this order.

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

05.06.2024

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

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To

The State Tax Officer,
Intelligence, Hosur.

SENTHILKUMAR RAMAMOORTHY,J

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