IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition Nos.12812 & 12820 of 2024
and W.M.P.Nos.13983, 13984, 13990 & 13991 of 2024

Tvl. Swarnalakshmi Distributors Private Limited,
Represented by its Authorised Signatory,
Mr.Jagadeeswaran Thanikachalam,
Old No.8, New No.21, Ground floor,
Godown Street, Chennai, Tamil Nadu-600 001. ... Petitioner in both WPs.

-vs-

1. The Union of India,
Represented by the Secretary,
Department of Revenue,
Ministry of Finance, No.137, North Block,
New Delhi-110 001.

2. The Goods & Services Tax Council,
Represented by its Secretary,
GST Council Secretariat,
5th floor Tower-II Jeevan Bharti Building,
Janpath Road, Connaught Place, New Delhi-110 001.

3.Central Board of Indirect Taxes & Customs,
Represented by its Chairman,
North Block, New Delhi-110 001.
4.The State of Tamil Nadu,
Represented by its Secretary to Government,
Commercial Taxes & Registration Department,
Secretariat, Fort St. George,
Chennai-600 009.

5. Principal Secretary/
Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai-600 005.

6. The Assistant Commissioner (ST),
Kothawalchavadi Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai-600 003.

7.The Deputy State Tax Officer-II (ST) (FAC),
Kothawalchavadi Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai-600 003. ... Respondents in both WPs.

Prayer in W.P.No.12812 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of impugned order bearing reference to GSTN:33AAECS8652B1ZJ/2018-2019 dated 24.07.2023 on the files of the 7th respondent and quash the same as arbitrary, without jurisdiction and void.

Prayer in W.P.No.12820 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of impugned recovery notice GSTN:33AAECS8652B1ZJ dated 09.02.2024 on the files of the 6th respondent and quash the same as arbitrary, without jurisdiction and void.

In both WPs.

For Petitioner : Ms.Jayalakshmi P.

For R1 to R3 : Mr.K.Mohana Murali

For R4 to R7 : Mr.V.Prashanth Kiran, Govt. Adv. (T)

COMMON ORDER

An order in original dated 24.07.2023 is assailed on the ground that the petitioner was not heard before such order was issued.

2. The petitioner asserts that he was unaware of proceedings culminating in the impugned assessment order until proceedings were initiated for recovery. It is further stated that all the notices and the order were uploaded on the GST portal in the "View Additional Notices and Orders" tab and not communicated to the petitioner through any other mode.

3. Learned counsel for the petitioner submits that the petitioner approached the Court within a reasonable time from the receipt of a recovery notice dated 09.02.2024. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.K.Mohana Murali, learned senior standing counsel, accepts

notice for respondents 1 to 3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for respondents 4 to 7. By referring to the impugned order, Mr.V.Prashanth Kiran submits that principles of natural justice were complied with by issuing notice dated 11.05.2023 in Form ASMT 10, show cause notice dated 12.06.2023 and a personal hearing notice.

5. On perusal of the impugned order, it is apparent that the tax proposal was confirmed because the petitioner did not reply to the show cause notice or avail of the personal hearing offered to the petitioner. In view of the assertion that the petitioner was unaware of proceedings and therefore did not participate, 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.

6. For reasons set out above, the impugned order dated 24.07.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a

period of two weeks from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is permitted to submit a reply to the show cause notice. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the 7th respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply. In view of the assessment order being set aside, the recovery notice is also set aside.

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

07.06.2024

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

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