IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:**07.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.12848 of 2024
and W.M.P.Nos.14013 & 14018 of 2024

Sekar Electronics,
1/93M, Paramathi Main Road,
Kabilarmalai Post, Paramathivelur,
Namakkal 637 204
Represented by its Proprietor. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Namakkal (Town) Assessment Circle,
Namakkal. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent leading to issuance of impugned order dated 30.12.2023 vide GSTN:33CPQPK4169B1ZV/2017-2018 and quash the same.

For Petitioner : Mr.S.Sathyanarayanan

For Respondent : Mr.T.N.C.Kaushik, Addl. Govt. Pleader (T)

ORDER

An order in original dated 30.12.2023 is assailed on the ground that the respondent failed to consider the petitioner's reply and instead confirmed the audit observations in the form of an adjudication order.

2. The petitioner is engaged in the business of purchasing and selling recharge coupons of Sun TV and Vodafone. Upon receipt of audit observations, the petitioner responded thereto on 25.09.2023. After audit report dated 28.09.2023 was issued, the respondent issued a show cause notice to the petitioner and the petitioner replied thereto. The impugned order was issued thereafter on 30.12.2023.

3. Learned counsel for the petitioner assails the impugned order in respect of four issues. The first issue dealt with by him was the denial of Input Tax Credit (ITC) in respect of payments made to the statutory auditors. Learned counsel pointed out that the show cause notice referred to sub-section (5) of Section 17 of applicable GST enactments and called upon the petitioner to explain why ITC should not be denied by reference thereto.

Learned counsel then submitted that the petitioner replied by stating that payment made to a statutory auditor does not fall within the scope of sub-section (5) of Section 17. In spite of such reply, he submits that ITC was denied on the ground that the petitioner did not submit the relevant tax invoice. By referring to the relevant tax invoices, learned counsel submits that if such tax invoice had been called for, the petitioner would have produced the same. The next aspect dealt with by learned counsel pertains to the alleged purchase of goods falling under HSN 85171110. On this aspect, learned counsel submits that the petitioner replied stating that it only purchases and sells online recharge coupons and not mobile phones. Once again, he submits that the reply was disregarded on the ground that the petitioner did not submit tax invoices. The third issue dealt with by learned counsel relates to the alleged non payment to creditors for a period exceeding 180 days. By adverting to the reply of the petitioner on this issue, learned counsel submits that the petitioner pointed out that the sundry creditor was Sun TV and that all payments were made within the credit period of three days. He further submitted that the bank statement was submitted as evidence of payment to the creditor. The last issue dealt with by learned counsel was alleged non maintenance of stock registers. On this issue, he pointed out that the petitioner replied by stating that the transactions are exclusively through an online portal. He also pointed out that the audit report records that maintenance of stock register is inapplicable.

4. In response to these contentions, Mr.T.N.C.Kaushik, learned Additional Government Pleader, who accepts notice for the respondent, submits that the petitioner failed to produce documents before the proper officer at the time of adjudication. Therefore, he submits that the tax proposals were confirmed.

5. The first issue dealt with by learned counsel for the petitioner was the denial of ITC in respect of payments made by the petitioner to its statutory auditors. On perusal of the show cause notice, it appears that the petitioner was called upon to show cause as to why ITC should not be denied because the supply falls within the scope of sub-section (5) of Section 17. The petitioner replied stating that supply of services by an

auditor does not fall within the scope of sub-section (5) of Section 17. The show cause notice did not call upon the petitioner to produce relevant invoices. The petitioner has also placed invoices on record. In these circumstances, reconsideration is necessary on this issue. The second issue pertains to the alleged purchase of goods falling under HSN 85171110. In response, the petitioner asserted that it deals with online recharge coupons and not mobile phones. At the time of audit, the petitioner has produced extensive documents relating to the nature of business carried on by the petitioner, including all financial statements and income tax returns. In view thereof, on this issue also, the matter requires reconsideration.

6. The 3rd issue dealt with by learned counsel for the petitioner is alleged non payment to creditors for a period exceeding 180 days. The show cause notice was based on the balance sheet for the relevant period indicating the outstanding of about Rs.2.05 lakhs to the creditor. In reply to the show cause notice, the petitioner stated that the only creditor is Sun TV and that the credit period is three days. In the absence of evidence of non payment for more than 180 days, it could not have been concluded that the

petitioner was not entitled to avail of ITC in this regard. As regards non maintenance of the stock register, even the audit report indicates that it is inapplicable to the nature of services provided by the petitioner.

7. For reasons set out above, the impugned order is unsustainable and is hereby set aside. As a corollary, the matter is remanded for reconsideration by the respondent. After providing a reasonable opportunity to the petitioner, including a personal hearing, the respondent is directed to pass a fresh order within a period of three months from the date of receipt of a copy of this order.

8. The writ petition is 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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SENTHILKUMAR RAMAMOORTHY,J

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To

The Assistant Commissioner (ST),
Namakkal (Town) Assessment Circle,
Namakkal.

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