IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.13003 of 2024 and
W.M.P.Nos.14155 & 14156 of 2024

Tvl. Gower Builders,
Represented by its Proprietor S.Manjula,
No.48, Thirumanjana Veedhi,
Koranad, Mayiladuthurai. ... Petitioner

-vs-

1. The Commercial Tax Officer,
Mayiladuthurai, Kumbakonam,
Trichy, Tamil Nadu.

2. The Assistant Commissioner (ST) (FAC),
No.58, 1st floor,
Anna Thirumana Mandapam,
Sitharkadu, Mayiladuthurai-609 003. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the respondent in its impugned proceedings of the 1st respondent's passed for the Assessment Year 2021-2022 in Form GST DRC-07 bearing Ref

No.ZD3304230798265 dated 18.04.2023 and consequential order DRC-07 in GSTIN:33COMPM8316R1Z5/2021-2022 passed by the 2nd respondent dated 18.04.2023 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondents : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order dated 18.04.2023 is challenged in this writ petition both on the ground of violation of principles of natural justice and on the ground that the reversal of Input Tax Credit (ITC) by the petitioner under Form GST DRC-03 dated 30.11.2022 was not taken into consideration while issuing the impugned order.

2. The petitioner asserts that she had procured construction materials for purposes of putting up a construction for personal use. Consequently, it is stated that ITC was reversed and sums of Rs.1,31,166/- each were remitted towards SGST and CGST on 30.11.2022. In spite of informing the respondents about this by reply dated 30.11.2022, it is stated that the impugned order was issued.

3. Learned counsel for the petitioner referred to Form GST DRC-03 and pointed out that this was totally disregarded while issuing the impugned order. She also points out that labour charges were not indicated in the intimation, but such charges were included in the impugned order. If provided an opportunity, learned counsel submits that the petitioner would be in a position to establish that materials were purchased for the petitioner's use and not for business purposes.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondents. She submits that the show cause notice included labour charges of Rs.7,55,684.6 and that the tax proposal in the show cause notice matches the impugned order. On instructions, she concurs that the petitioner reversed the ITC under Form GST DRC-03 dated 30.11.2022.

5. On perusal of the impugned order, it is evident that the reversal of ITC by the petitioner to the extent of Rs.1,31,166/- each towards SGST and CGST was not taken into consideration in the impugned order. Solely for such reason, the impugned order calls for interference.

6. Therefore, the impugned order dated 18.04.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice within a period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the 1st 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.

10.06.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J

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