IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2024

CORAM :

**THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.13455 & 13464 of 2024 and
W.M.P.Nos.14607, 14610, 14622 & 14623 of 2024

**<u>In both WPs:</u>**

Tvl. K.B.Jaishankar,
Rep. By its Proprietor K.B.Jaishankar,
No.175, Elliyaamman Koil Street,
Kattupalli,
Kanchipuram-600 120. ... Petitioner

Versus

1. The Commercial Tax Officer,
   Cholavaram Assessment Circle,
   Tiruvallur,
   Tamil Nadu.

2. The Deputy Commissioner (ST).
   GST-Appeal, Chennai-1,
   3rd Floor, C.T.Annexe Building,
   No.1, Greams Road,
   Chennai-600 006. ...Respondents

**Prayer in W.P.No.13455 of 2024** : A Writ Petition filed under Article

226 of the Constitution of India pleased to issue a Writ of Certiorari to call for the records on the files of the 1st Respondent passing the Impugned Order vide FORM-DRC-07 bearing a Ref.No.ZD331023093309K in GSTIN:33AJUPJ6815H2ZW dated 16.10.2023 for the period 2018-19 and the consequential Appeal Order in Spl. Reg.No.1599/2024 dated 18.04.2024 passed by the 2nd Respondent, and quash the same as being contrary to the provision of CGST Act, 2017.

**Prayer in W.P.No.13464 of 2024** : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to call for the records on the files of the 1st Respondent passing the Impugned Order vide FORM-DRC-07 bearing a Ref.No.ZD331023093409I in GSTIN:33AJUPJ6815H2ZW dated 16.10.2023 for the period 2018-19 and the consequential Appeal Order in Spl. Reg.No.1600/2024 dated 18.04.2024 passed by the 2nd Respondent, and quash the same as being contrary to the provision of CGST Act, 2017.

**In both WPs:**

For Petitioner :Mr.S.Rajendran

For Respondents :Mr. V. Prashanth Kiran,
Government Advocate (Taxes)

**COMMON ORDER**

Orders in original dated 16.10.2023 and the subsequent appellate orders dated 18.04.2024 are challenged in these writ petitions.

2. The petitioner asserts that he is in the business of renting trailer vehicles. Since such trailers were purchased by him in furtherance of business, the petitioner contends that he is entitled to input tax credit in relation thereto. By asserting that the petitioner was unaware of proceedings culminating in the impugned orders because the show cause notices and impugned orders were uploaded on the GST portal but not communicated to the petitioner through any other mode, the present writ petitions were filed.

3. Learned counsel for the petitioner submits that the confirmed tax proposals pertain to the alleged wrongful ITC claims. He points out that the petitioner claimed and availed eligible ITC inasmuch as the trailers were purchased in furtherance of business. By pointing out that the appellate orders were rejected on the ground of delay, learned counsel points out that 10% of the disputed tax demand was

remitted while filing the appeal.

4. Mr.V.Prashanth Kiran, leaned Government Advocate, accepts notice for the respondents. By referring to the impugned orders, he points out that such orders were preceded by an intimation and a show cause notice. He also points out that the petitioner availed of the statutory remedy.

5. On perusal of the impugned orders, it is evident that the tax proposal pertains to the rejection of the petitioner's ITC claim under sub-section (5) of Section 17 of applicable GST enactments. In the affidavit, the petitioner asserts that he is in the business of purchasing and then leasing trailers (vehicles) to Larsen & Toubro Limited. The impugned orders also disclose that the petitioner was not heard and that the tax proposal was being confirmed because the petitioner did not reply. In these facts and circumstances, the interest of justice warrants that the petitioner be provided a reasonable opportunity. Since the petitioner has remitted 10% of the disputed tax

demand while filing the statutory appeal, revenue interest has been protected to that extent.

6. For reasons set out above, the impugned orders dated 16.10.2023 are set aside and the matters are remanded to the first respondent for reconsideration. The petitioner is permitted to submit a reply to the show cause notice within fifteen days from the date of receipt of a copy of this order. Upon receipt thereof, the first respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders within three months from the date of receipt of a copy of this order.

7. In view of the above order, it is not necessary to adjudicate the challenge to the appellate orders. W.P.Nos.13455 and 13464 of 2024 are disposed of on the above terms. Consequently, W.M.P.Nos.14607, 14610, 14622 and 14623 of 2024 are closed. No costs.

**10.06.2024**

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes/ No

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To

1. The Commercial Tax Officer,
   Cholavaram Assessment Circle,
   Tiruvallur,
   Tamil Nadu.

2. The Deputy Commissioner (ST).

GST-Appeal, Chennai-1,
3rd Floor, C.T.Annexe Building,
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**SENTHILKUMAR RAMAMOORTHY J.**

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W.P.Nos.13455 & 13464 of 2024 and
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**10.06.2024**