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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: **11.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.13530 of 2024
and W.M.P.Nos.14680 & 14681 of 2024

M/s.Jayasri Traders
Represented by Proprietor Mr.Kaliyan Jaganathan,
620/15, Salem Main Road, Elavansurkottai,
Villupuram, Tamil Nadu 607 202. ... Petitioner

-vs-

1.The Assistant Commissioner (ST)
Villupuram II Assessment Circle,
Commercial Taxes Building,
Integrated Master Plan Complex,
Villupuram 605 602.

2.The State Tax Officer (Inspection II) Vellore
Office of the DC Inspection,
Villupuram 605 602. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for

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the records leading to the issuance of Order bearing reference No.ZD330623134681L dated 28.06.2023 Form DRC 07 along with the proceedings GSTIN/33AOYPJ6894F1Z8/2020-21 dated 28.06.2023, herein and quash the same, and direct the first respondent herein to consider the case under Section 73 of CGST / TNGST Act, 2017, with a direction that the inadvertent availment of blocked credit and reversal done subsequently which is to consider and reassess the case with best of act.

For Petitioner : Mr.T.C.Prakash

For Respondents : Mr.V.Prasanth Kiran, GA (T)

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ORDER

An order dated 28.06.2023 is assailed in this writ petition on the ground that the materials placed on record by the petitioner were not duly considered.

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2. The petitioner had purchased a car and availed of Input Tax Credit (ITC) in relation thereto. Upon realizing that ITC should not have been availed of in respect of such purchase, the petitioner paid the tax dues under Form GST DRC 03 on 12.09.2023. This was communicated to the respondent in reply dated 12.06.2023 to show cause notice dated 03.05.2023. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner submits that proceedings were initiated under Section 74 of applicable GST enactments and 100% penalty was imposed in spite of the petitioner remitting the requisite tax amount prior to the issuance of the impugned order. Therefore, he submits that the matter requires re-consideration. On instructions, he submits that the petitioner agrees to remit 10% of the cess demand under the impugned order as a condition for remand.

4. Mr.V.Prasanth Kiran, learned Government Advocate, accepts

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notice for the respondents. He points out that principles of natural justice were complied with and that the petitioner's reply was taken into consideration.

5. The petitioner placed on record evidence of payment of a sum of Rs.4,78,573/- on 12.09.2023 with regard to the wrongful availment of Input Tax Credit. In those circumstances, by relying on a circular issued by the CBIC, the petitioner contends that interest should not be levied. On perusal of the impugned order, it is evident that the tax dues towards SGST and CGST were discharged by the petitioner. It also appears that 100% penalty was imposed under Section 74 without recording any reasons for invoking Section 74. In these circumstances, the matter requires re-consideration by putting the petitioner on terms.

6. Therefore, impugned order dated 28.06.2023 is set aside on condition that the petitioner remits 10% of the cess demand under the impugned order within ***two weeks*** from the date of receipt of a copy

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of this order. The petitioner is also permitted to submit a detailed reply to the show cause notice during the aforesaid period. Upon receipt thereof and on being satisfied that 10% of the cess amount was received, the first 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.

7. W.P.No.13530 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.14680 and 14681 of 2024 are closed.

11.06.2024
(2/2)

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

To

1.The Assistant Commissioner (ST)

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2.The State Tax Officer (Inspection II) Vellore
Office of the DC Inspection,
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SENTHILKUMAR RAMAMOORTHY,J

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