IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.14946 of 2024
and W.M.P.Nos.16220 & 16221 of 2024

Geetha Pharma,
Represented by its Partner
Dr.K.K.Rajagopal,
No.92/96-101, Upstairs Town Railway Station Road,
Salem – 636 001. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Hasthampatty Assessment Circle,
4th Floor, Integrated Commercial Taxes Building,
Pitchards Road, Hasthampatty,
Salem – 7. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent in Reference Number: ZD331223270146R/2017-18 dated 30.12.2023 and quash the same as arbitrary, illegal.

For Petitioner : Mr.S.Ramanan

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

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ORDER

An order in original dated 30.12.2023 is challenged only insofar as two tax proposals are concerned. In respect of assessment period 2017-18, proceedings were initiated against the petitioner by issuing a show cause notice dated 23.09.2023 in respect of eight defects. The petitioner replied to the show cause notice on 25.12.2023. The impugned order was issued in these facts and circumstances on 30.12.2023.

2. Learned counsel for the petitioner submits that the findings in respect of defect no.1 are liable to be set aside in as much as the

petitioner had submitted declarations from the suppliers concerned, but such declarations were not taken into account by the assessing officer. In order to substantiate this contention, learned counsel referred to the declarations of Meena Corporates, Sri Amman Ambigai Agencies and Mankind Pharma Limited. He also pointed out that the reply of the petitioner refers to the suppliers' declarations as an enclosure to defect no.1. He also placed on record the screen shot in respect of uploading the said documents.

3. As regards defect no.8, learned counsel points out that the tax proposal in the show cause notice specified a tax rate of 12%, whereas the tax rate of 18% is specified in the impugned order.

4. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that the petitioner's reply was duly taken into consideration by the assessing officer and most of the tax proposals were dropped upon such consideration. With regard

to the submission of supplier certificates, learned Government Advocate submits, on instructions, that such supplier declarations were not submitted by the petitioner to the assessing officer. As regards credit notes, he submits that the appropriate GST rate is 18% and that the petitioner has admitted that credit notes of the value of Rs.35,57,054/- were reported, whereas a deduction of Rs.66,51,937/- was reflected in the petitioner's annual returns towards credit notes.

5. The petitioner has placed on record the supplier declarations. The reply to the show cause notice makes reference to the supplier declarations as an enclosure for defect no.1. Even the impugned order refers to the petitioner's reply and the reference thereto to the supplier declarations. In these circumstances, it appears *prima facie* that the supplier declarations were submitted by the petitioner. However, this is a matter to be verified by the assessing officer, and a remand is warranted.

6. As regards credit notes, upon examining the petitioner's GSTR 1 statement, the assessing officer recorded a factual finding that credit notes of the aggregate value of Rs.35,57.054/- were reported, whereas, deduction was claimed to the extent of Rs.66,51,937/-. This conclusion has not been contested by the petitioner. The only grievance in this regard is with regard to the GST rate. Therefore, the petitioner should discharge liability in this regard at the GST rate of 12% as a condition for remand. In addition, the petitioner also accepted the imposition of penalty in respect of defect no.2. This amount is also to be paid as a condition for remand.

7. Subject to the conditions set out in the preceding paragraph, impugned order dated 30.12.2023 is set aside only insofar as it pertains to defect no.1 and defect no.8 and the matter is remanded for re-consideration. After providing a reasonable opportunity to the petitioner, including a personal hearing, the respondent is directed to issue a fresh order with regard to the above mentioned two defects.

8. W.P.No.14946 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.16220 and 16221 of 2024 are closed.

18.06.2024

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

To

The Assistant Commissioner (ST),
Hasthampatty Assessment Circle,
4th Floor, Integrated Commercial Taxes Building,
Pitchards Road, Hasthampatty,
Salem – 7.

SENTHILKUMAR RAMAMOORTHY,J

rna

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