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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.15923 & 15925 of 2024
and W.M.P.Nos.17387, 17391 & 17386 of 2024

Tvl. Jaris Enterprises,
GSTIN/ID: 33CAJPS2489E1ZG,
Represented by its Proprietor Ismail Sirajudeen,
34/9, Chakarapani Street, Pollachi,
Coimbatore – 641 002. ... Petitioner in both WP's

-vs-

The State Tax Officer,
Pollachi (West) Assessment Circle,
No.28, B/163, Main Road, Opp. BA Office,
Valparai – 642 127. ... Respondent in W.P.15923 of 2024

1.The State Tax Officer,
Pollachi (West) Assessment Circle,
No.28, B/163, Main Road, Opp. BA Office,
Valparai – 642 127.

2.The Bank Manager,
Union Bank of India, M.K.S.Towers,
No.41, New Scheme Road, Mahalingapuram P.O.,
Pollachi 642 002. ... Respondents in W.P.15925 of 2024

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<u>PRAYER in W.P.No.15923 of 2024</u>: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned order in Form GST DRC – 07 bearing reference number ZD3312232031727/2018-19 dated 26.12.2023 issued by the Respondent and quash the same.

<u>PRAYER in W.P.No.15925 of 2024</u>: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned Recovery Notice in Form GST DRC – 13 in GSTIN: 33CAJPS2489E1ZG/2022-23/A3 dated 07.05.2024 issued by the 2nd respondent and quash the same.

For Petitioner in both WP's	:	Mr.S.Durairaj
For Respondent in both WP's	:	Mr.C.Harsha Raj, AGP (T)

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COMMON ORDER

By these two writ petitions, an order in original dated 26.12.2023 and the recovery notice dated 07.05.2024 are challenged. The petitioner received a show cause notice calling upon the petitioner to show cause in respect of the mismatch between the petitioner's GSTR 3B returns and the auto populated GSTR 2A. The petitioner replied to the show cause notice by submitting a certificate from the supplier concerned. Impugned order dated 26.12.2023 was issued in the said facts and circumstances.

2. Learned counsel for the petitioner submits that the tax proposal was confirmed because the petitioner submitted a certificate from the supplier, but not from the Chartered Accountant of the supplier. By referring to the certificate from the Chartered Accountant, learned counsel submits that such certificate dated 21.12.2023 was received subsequent to the order. In these circumstances, he seeks another opportunity to establish that only

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eligible ITC was claimed. On instructions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He submits that the impugned order was issued after considering the petitioner's reply and the documents annexed thereto, including the certificate from the supplier.

4. The impugned order records that the petitioner failed to submit a certificate in compliance with the requirements of Circular No.183/2022. The petitioner has placed on record a certificate dated 21.12.2023 from the Chartered Accountant of the supplier. In the affidavit, the petitioner asserts that such certificate was received after the impugned order was issued. The facts and circumstances outlined above warrant re-consideration by putting the petitioner on terms.

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5. Therefore, impugned order dated 26.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand within ***fifteen days*** from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit additional documents. Upon receipt thereof and on being satisfied that 10% of the disputed tax demand was received, the 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 the additional documents of the petitioner. In view of the assessment order being set aside, the recovery notice is also set aside.

6. W.P.Nos.15923 and 15925 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.17387, 17391 and 17386 of 2024 are closed.

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

To

1.The State Tax Officer,
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No.28, B/163, Main Road, Opp. BA Office,
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