IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.14646 of 2024
and W.M.P.Nos.15910 & 15912 of 2024

Tvl. Thirumalai Electricals,
Represented by its Proprietor Vijaya Rangasamy
48/8, Vadamalapatti, Pochampalli,
Krishnagiri, Tamil Nadu 635 206
GSTIN: 33BGWPV7365Q1ZZ ... Petitioner

-vs-

The Assistant Commissioner (ST),
Krishnagiri – II Circle,
Krishnagiri. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on the files of the respondent in impugned proceedings in Form GST DRC 07 vide GSTIN: 33BGWPV7365Q1ZZ / 2018-2019 dated 05.10.2023 and consequential order in Ref.No. ZD331023042309V dated 09.10.2023 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mrs.K.Vasanthamala, GA (T)

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ORDER

An order in original dated 05.10.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. By asserting that the petitioner had entrusted GST compliances to an auditor and that such auditor was unwell, the present writ petition was filed.

2. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to alleged mismatch between the petitioner's GSTR 3B returns and the auto populated GSTR 2A. He submits that the respondent committed an error in computing the difference by only relying on the returns for December 2020. If provided an

opportunity, he submits that the petitioner would be in a position to justify the ITC claim.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that a notice in Form GST ASMT 10 was issued on 12.04.2023, a show cause notice was issued on 22.08.2023 and three reminders were issued before the impugned order was issued.

4. On examining the impugned order, it is evident that the tax proposal pertains to a mismatch between the petitioner's GSTR 3B returns and the auto populated GSTR 2A. Such tax proposal was confirmed because the petitioner did not respond to any of the notices. Since the petitioner asserts that he could not respond on account of not being aware of proceedings, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits albeit by putting the petitioner on terms. On instructions, learned counsel for the petitioner agrees to remit 10% of

the disputed tax demand as a condition for remand. He makes a request that the sum of Rs.31,433/- paid by him on 12.06.2024 be adjusted and that he would make good the shortfall.

5. Therefore, impugned order dated 05.10.2023 is set aside on condition that the petitioner remits, in the aggregate, 10% of the disputed tax demand after taking into consideration any remittance previously made in that regard. Such remittance shall be made within ***two weeks*** from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice during the said period. Upon receipt thereof and on being satisfied that 10% of the disputed tax demand, in the aggregate, 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 receipt of the petitioner's reply.

6. W.P.No.14646 of 2024 is disposed of on the above terms. No

costs. Consequently, W.M.P.Nos.15910 and 15912 of 2024 are closed.

13.06.2024

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

To

The Assistant Commissioner (ST),
Krishnagiri – II Circle,
Krishnagiri.

SENTHILKUMAR RAMAMOORTHY,J

rna

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