IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.14982 of 2024 and
W.M.P.Nos.16275 & 16277 of 2024

Sri Vijayalakshmi Supplyer,
Rep by its Proprietor
Mr.Venkatasamy Rajagopal Selvakumar,
No.39, 2nd floor,
Sri Mahalakshmi Nagar 1st cross street,
Chennai - 600 077. .. Petitioner

-vs-

The State Tax Officer,
(Formerly known as the Commercial Tax Officer),
Vanagaram Assessment Circle,
Integrated Commercial Taxes Building,
No.4/109, Chennai Bangalore Highways,
Varadharajapuram, Nazarathpet,
Poonamallee, Chennai-600 123. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the Respondent in Reference Number ZD330424164237I/2018-19 dated 22.04.2024 and quash the same as arbitrary, illegal.

For Petitioner : Mr.S.Ramanan

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An order in original dated 22.04.2024 is challenged on the ground that a personal hearing was not offered to the petitioner.

2. By issuing show cause notice dated 27.12.2023, proceedings were initiated against the petitioner in respect of two defects. The said defects were under declaration of output tax and excess claim of Input Tax Credit (ITC). By reply dated 16.02.2024, the petitioner stated that the turnover for March 2019 was inadvertently reported as Rs.99,77,487/- instead of Rs.67,34,525/- because one bill was inadvertently reported twice. The petitioner also stated that the correct turnover was reported in the GSTR 3B return and that the mistake was rectified in April 2019. The petitioner also replied with regard to availment of ITC by stating that only eligible ITC was availed of in respect of building materials. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner submits that no personal hearing

was offered and that the impugned order was issued by referring to the petitioner's reply.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the petitioner's reply was taken into consideration and that the petitioner opted out of the personal hearing in reply dated 16.02.2024.

5. As per sub-section (4) of Section 75 of applicable GST enactments, a personal hearing is required to be provided either if requested for or if an order adverse to the tax payer is proposed to be issued. By the impugned order, both the tax proposals were confirmed. In these circumstances, a personal hearing should have been offered to the petitioner. On account of infraction of a mandatory statutory prescription, the impugned order cannot be sustained.

6. For reasons set out above, the impugned order dated 22.04.2024 is

set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit an additional reply along with documents, if any, within a period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, 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.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

18.06.2024

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

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To

The State Tax Officer,
(Formerly known as the Commercial Tax Officer),
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SENTHILKUMAR RAMAMOORTHY,J

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