IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.15920 of 2024
and W.M.P.Nos.17384 & 17385 of 2024

Tvl. Hosur Builders,
GSTIN: 33ANQPR1123G1Z4.
Represented by its Proprietor Rajeshwari,
54, 1st Floor, Sowripalayam Road,
Coimbatore – 641 045. ... Petitioner

-vs-

The Assistant Commissioner (ST)(FAC),
Hosur (South-1) Assessment Circle,
Krishnagiri, Hosur 635 109. ... Respondent

PRAYER: 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 assessment order in Form GST DRC – 07 bearing reference number ZD33032405929D/2017-18 dated 30.03.2024 issued by the respondent and quash the same.

For Petitioner : Mr.S.Durairaj

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

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ORDER

An assessment order dated 30.03.2024 is assailed on the ground that documents filed by the petitioner were not taken into consideration while confirming the tax proposals.

2. The petitioner asserts that she was awarded contracts by the Coimbatore Municipal Corporation for providing services in relation to cleaning of drains, sanitary work and solid waste management. Since such services are exempt under Notification No.12/2017 dated 28.06.2017, no tax was paid thereon. Upon receipt of show cause notice dated 30.09.2023 in respect of about five audit observations,

the petitioner replied on 28.10.2023 and contended that audit observation no.1 was liable to be dropped on account of exemption under Notification No.12/2017. As regards audit observation no.2, the petitioner reversed Input Tax Credit through Form GST DRC – 3. An explanation was provided with regard to the other audit observations. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner submits that the petitioner had provided the relevant work orders as enclosures to reply dated 28.10.2023. Thereafter, he submits that documents such as the IT return, bank statement, etc. were called for. These documents were provided as enclosures to letter dated 24.03.2024. In spite of providing such documents, he submits that the petitioner's claim for exemption was rejected on the ground that the petitioner did not provide the contract agreement. He contends that such contract agreement was not called for by the respondent and that the petitioner would have submitted other documents such as certificates

from the Coimbatore Municipal Corporation if called upon to produce the same. He also submits that proceedings in respect of defect no.3 were dropped and that it was decided to segregate proceedings with regard to defect no.5. On instructions, without prejudice, learned counsel submits that the petitioner agrees to remit a sum of Rs.3,00,000/- as a condition for remand.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She submits that the petitioner replied to the show cause notice but only annexed work orders. On account of the petitioner failing to establish that the entire supply value is exempted under Notification No.12/2017, she submits that the assessing officer confirmed the tax proposal. She further submits that the petitioner's reply was taken into consideration and that, therefore, no case is made out for interference.

5. As regards exempted supply, the petitioner has placed on record a document indicating that the work was awarded to the

petitioner by the Coimbatore Municipal Corporation. In addition, the petitioner has also placed on record communications from the Coimbatore Municipal Corporation awarding service contracts to the petitioner. Also annexed are certificates from the Assistant Executive Engineer, Coimbatore Municipal Corporation with regard to specific items of work, including amounts paid in respect thereof. *Prima facie*, these documents indicate that these were pure service contracts. However, this is required to be established by the petitioner by submitting all relevant documents. Since the demand with regard to defect no.1 constitutes a substantial portion of the overall demand, the matter requires re-consideration by putting the petitioner on terms.

6. For reasons set out above, impugned order dated 30.03.2024 is set aside on condition that the petitioner remits a sum of Rs.3,00,000/- towards the disputed tax demand within ***three weeks***

from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit additional documents. On receipt thereof and on being satisfied that the sum of Rs.3,00,000/- towards 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 receipt of additional documents of the petitioner.

7. W.P.No.15920 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.17384 and 17385 of 2024 are closed.

27.06.2024

rna

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

To

The Assistant Commissioner (ST)(FAC),
Hosur (South-1) Assessment Circle, Krishnagiri, Hosur 635 109.

SENTHILKUMAR RAMAMOORTHY,J

rna

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