IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15136 of 2024 and
W.M.P.Nos.16460 & 16462 of 2024

Tvl. Mahaalaxmi Ceramics,
Represented by its Partner Mr.Vijayanand S G,
2, Dharapuram Road, Udumalpet,
Tiruppur, Tamil Nadu-642 126. .. Petitioner

-vs-

The State Tax Officer,
(also known as Commercial Tax Officer),
Udumalpet North Assessment Circle,
Pollachi, Coimbatore. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the Respondent herein in GSTIN No 33AAWFM5806A1ZD/2019-20 dated 19.06.2023 along with his FORM GST DRC 07 with Reference No. ZD330623084436B dated 20.06.2023, for the tax period April 2019 to

March 2020, quash the same.

For Petitioner : Mr.K.A.Parathasarathy

For Respondent : Mr.C.Harsha Raj, AGP (T)

ORDER

An order in original dated 20.06.2023 is assailed on the ground that the petitioner's reply dated 15.12.2023 was not taken into consideration.

2. Upon scrutiny of the petitioner's returns, a notice in Form ASMT-10 dated 15.11.2022 was issued to the petitioner. The petitioner responded thereto on 15.12.2022. This was followed by show cause notice dated 18.01.2023. A brief reply dated 10.03.2023 was issued to such show cause notice. Eventually, proceedings culminated in the impugned order dated 20.06.2023.

3. Learned counsel for the petitioner referred to the petitioner's reply dated 15.12.2022 and pointed out that such reply dealt with all issues, including output mismatch, input mismatch and Input Tax Credit (ITC)

variation. In particular, learned counsel points out that the mismatch was explained by referring to the previous years ITC availed of in the current year, etc. By turning to the impugned order, learned counsel points out that only the reply dated 10.03.2023 was noticed and no reasons were recorded on the conclusion that the reply was not sufficient for the points raised in the notices. Learned counsel contends that this violates the statutory mandate in sub-section (6) of Section 75 of applicable GST enactments.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He points out that the reply dated 15.12.2022 was to the notice in Form ASMT-10 and not to the show cause notice. At a minimum, he submits that the petitioner should have stated in the reply dated 10.03.2023 that the reply to the notice in Form ASMT-10 should be treated as the reply to the show cause notice.

5. On perusal of the impugned order, there is no reference therein to the reply to the notice in Form ASMT-10. The notice in Form ASMT-10 is, however, referred to therein. In addition, a conclusion is recorded that the

petitioner's reply was not sufficient for the points raised in the notices, but no reasons are specified for confirming the tax proposal. Learned counsel for the petitioner also pointed out that the entire tax liability towards SGST along with interest and penalty was recovered from the petitioner. When these facts and circumstances are taken into account, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits.

6. Therefore, the impugned order dated 20.06.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice within a period of 15 days 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.

20.06.2024

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

kj

To

The State Tax Officer,
(also known as Commercial Tax Officer),
Udumalpet North Assessment Circle,
Pollachi, Coimbatore.

SENTHILKUMAR RAMAMOORTHY,J

kj

Writ Petition No.15136 of 2024 and
W.M.P.Nos.16460 & 16462 of 2024

20.06.2024