IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.15116 of 2024
and W.M.P.Nos.16412 & 16413 of 2024

M/s.Mars Infra Construction,
GSTIN: 33AAUFM1177A1ZF
B-3, Sri Ram Avenue, Sri Devi Nagar,
VOC Street, Avadi, Chennai 600 071,
Represented by its Partner Mr.Sattar Shaheetha ... Petitioner

-vs-

The Deputy State Tax Officer – Avadi Circle,
Integrated Commercial Taxes Building,
'I' Floor, Room No.122, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records in reference in ZD331223272234S dated 30.12.2023 and quash the same and direct the respondent to consider the documents filed in ARN No. ZD3308230181481 dated 03.08.2023.

For Petitioner : Mr.R.Swarnavel

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

****

ORDER

An order in original dated 30.12.2023 is challenged in this writ petition on the ground of breach of principles of natural justice.

2. The petitioner is engaged in works contract business. In financial year 2017-18, a contract was awarded to the petitioner by the Avadi Municipality. The petitioner asserts that such work was executed between April 2017 and June 2017. Since the said work was executed during the pre GST period, the petitioner had stated in the annual return that the turnover of Rs.1,79,79,778/- was non GST supply. Based on Form 26AS, which indicated the payment of a sum of Rs.1,55,24,900/-, proceedings were initiated against the petitioner by issuing show cause notice dated 30.08.2023. The petitioner replied thereto on 18.12.2023. The impugned order was issued thereafter.

3. Learned counsel for the petitioner referred to the certificate issued by the Avadi City Municipal Corporation and contended that the said certificate clearly indicates that work was carried out between April 2017 and June 2017. He further submits that the petitioner had requested for an additional personal hearing by reply dated 18.12.2023 on account of heavy rains during the personal hearing offered on 05.12.2023. Because the impugned order was issued without providing such additional personal hearing, learned counsel submits that the impugned order calls for interference. He also submits that the petitioner would be in a position to establish that deductions were made under the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT Act) in respect of payments received by the petitioner. For such reasons, he seeks another opportunity.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He points out that principles of

natural justice were complied with. Indeed, he submits that a notice in Form ASMT 10 was issued upon noticing discrepancies in the returns of the petitioner. Such notice was replied to by the petitioner on 03.08.2023. He also points out that the petitioner's reply to the show cause notice was taken into consideration before confirming the tax proposal. He further submits that the petitioner has not placed on record any evidence that returns were filed under the TNVAT Act and that taxes were paid in respect of receipts from the Avadi Municipality. As regards the contention of learned counsel for the petitioner that an additional personal hearing was not granted, learned Additional Government Pleader points out that such personal hearing was granted by reminder letter dated 22.12.2023 fixing the personal hearing on 26.12.2023.

5. The documents on record include the notice in Form ASMT 10 dated 03.07.2023, the reply dated 03.08.2023, the show cause notice dated 30.08.2023 and the reply thereto dated 18.12.2023. In

such reply, the petitioner has requested for a further personal hearing. On instructions, learned Additional Government Pleader has pointed out that a further personal hearing was offered by reminder letter dated 22.12.2023 on 26.12.2023. On perusal of the impugned order, it is clear that the petitioner's reply has been referred to and, in fact, extracted. Therefore, principles of natural justice were not contravened in this case. As submitted by learned Additional Government Pleader, there is nothing on record to indicate that VAT was paid on the amount received by the petitioner for execution of work for the Avadi City Municipal Corporation or even to indicate that VAT returns were filed. In these circumstances, no case is made out for interference under Article 226 of the Constitution.

6. The impugned order is dated 30.12.2023. The affidavit in support of this writ petition was affirmed on 30.04.2024, which is the last date within the condonable period. In these circumstances, it is just and necessary that the petitioner be permitted to prosecute a

statutory appeal.

7. For reasons set out above, W.P.No.15166 of 2024 is disposed of by permitting the petitioner to file a statutory appeal. If such appeal is presented within ***ten days*** from the date of receipt of a copy of this order, the appellate authority is directed to receive and dispose of such appeal on merits without going into the question of limitation. No costs. Consequently, W.M.P.Nos.16412 and 16413 of 2024 are closed.

19.06.2024

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

To

The Deputy State Tax Officer – Avadi Circle,
Integrated Commercial Taxes Building,
'I' Floor, Room No.122, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

<u>SENTHILKUMAR RAMAMOORTHY,J</u>

rna

W.P.No.15116 of 2024
and W.M.P.Nos.16412 & 16413 of 2024

19.06.2024