IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition Nos.15542 & 15546 of 2024
and W.M.P.Nos.16905, 16908, 16918 & 16919 of 2024

In both WPs.

Tvl.Maurya Hotels (Madras) Private Limited,
Represented by its Authorised Signatory,
Mr.Prabu K.
168/169, Arcot Road, Vadapalani,
Chennai, Tamil Nadu 600 026. .. Petitioner

-vs-

1. The Assistant Commissioner (ST),
K.K.Nagar Assessment Circle,
PAPJM Annexe Building No.1,
Greams Road, Chennai-600 006.

2.The Deputy State Tax Officer,
K.K.Nagar Assessment Circle,
PAPJM Annexe Building No.1,
Greams Road, Chennai-600 006. ... Respondents

Prayer in W.P.No.15542 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of impugned recovery notice GSTN:33AACCM8664P2ZT dated

13.05.2024 in the file of the 1st respondent and quash the same as arbitrary, without jurisdiction and void.

Prayer in W.P.No.15546 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in impugned order ZD331223277706C bearing reference to GSTN: 33AACCM8664P2ZT/2017-2018 dated 30.12.2023 in the files of the 2nd respondent and quash the same as arbitrary, without jurisdiction and void.

In both WPs.

For Petitioner : Ms.P.Jayalakshmi

For Respondents : Mrs.K.Vasanthamala, Govt. Adv. (T)

COMMON ORDER

By these writ petitions, the order in original dated 30.12.2023 and the consequential recovery notice dated 13.05.2024 are challenged. Upon receipt of show cause notice dated 11.01.2023, the petitioner replied on 08.02.2023. In such reply, the petitioner stated that the interest liability for financial year 2017-2018 was discharged by paying a sum of Rs.35,545/- through the GSTR 3B return and a sum of Rs.2,316/- through DRC-03. As regards Input Tax Credit (ITC), the petitioner stated that only eligible ITC was availed of. The GSTR 9 return and copies of invoices for financial year

2017-2018 were annexed to the reply. The impugned order was issued in these circumstances.

2. By referring to the impugned order in original, learned counsel for the petitioner points out that the petitioner's reply was disregarded while concluding that the tax payer is liable to pay interest of Rs.17,751/- under CGST and Rs.18,758/- under SGST. She further submits that the reply with regard to the mismatch between the petitioner's GSTR 3B returns and the auto-populated 2A was also disregarded. In fact, learned counsel points out that it is recorded in the order that the tax payer did not reply on this point after receipt of the show cause notice.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondents. She submits that principles of natural justice were complied with by issuing show cause notice dated 23.03.2023. She also submits that the matter would be reconsidered if remanded.

4. On perusal of the show cause notice, it appears that two issues were dealt with therein. The first issue is payment of interest for belated

filing of returns. In the reply dated 08.02.2023, this issue was responded to by stating that the interest liability was discharged. The petitioner annexed evidence of discharge to the reply. As regards the second issue dealt with in the show cause notice, namely, excess availment of ITC, the petitioner replied by asserting that excess ITC was not availed of. In support of such submission, the petitioner attached the GSTR 9 return and copies of invoices.

5. In the impugned order, the petitioner's response with regard to payment of interest was referred to. However, a finding was recorded that the interest amount does not tally. On examining the petitioner's reply in comparison with the amounts indicated as payable towards interest, it appears that the amounts tally. As regards the ITC claim, the petitioner's reply has been completely disregarded and a finding recorded that the tax payer did not reply on this point. In these circumstances, the impugned order and recovery notice warrant interference.

6. For reasons set out above, the impugned order in original dated 30.12.2023 and recovery notice dated 13.05.2024 are set aside and the

matter is remanded for reconsideration. The petitioner is permitted to submit additional documents, if any, within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of the petitioner's reply, 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. In view of the order in original being set aside, the bank attachment is raised.

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

21.06.2024

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

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SENTHILKUMAR RAMAMOORTHY,J

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To

1. The Assistant Commissioner (ST),
K.K.Nagar Assessment Circle,
PAPJM Annexe Building No.1,
Greams Road, Chennai-600 006.

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