IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.15478 of 2024
and W.M.P.Nos.16834 & 16835 of 2024

Tvl. Annai Packs
Rep by its Partner,
No.3/66, Rajalakshmi Rice Mill Compound
Vanjipalayam
Tiruppur – 641 663. ... Petitioner

-vs-

State Tax Officer
Avinashi Road Circle,
Coimbatore. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the entire records relating to the impugned order in Reference No.

ZD331223250764L dated 28.12.2023 read with rectification order in Reference No. ZD331223257452P dated 29.12.2023 passed by the respondent and quash the same.

For Petitioner : Mr.T.Ramesh

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

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ORDER

The petitioner assails an order dated 28.12.2023 on the ground that it travels beyond the scope of the show cause notice. Pursuant to notice in Form ASMT dated 30.11.2022 and an intimation dated 28.04.2023, show cause notice dated 12.08.2023 was issued to the petitioner calling upon the petitioner to show cause as to why a sum of Rs.2063/- towards the difference between the petitioner's GSTR 3B returns and the auto populated GSTR 2A is not payable by the petitioner. Pursuant thereto, the said sum was paid by the petitioner.

In these circumstances, impugned order dated 28.12.2023 was issued and tax liability was imposed not only in respect of the above mentioned excess ITC claim but also with regard to a difference in the turnover reported in the annual return of the petitioner.

2. Learned counsel for the petitioner referred to the show cause notice and the impugned order and pointed out that defect no.2 finds no place in the show cause notice. As a consequence, he contends that the impugned order is unsustainable.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He points out that the petitioner remitted the amount due towards defect no.1 in the order. As regards defect no.2, he submits that the order may treated as a show cause notice so as to provide an opportunity to the petitioner. This request is opposed by learned counsel for the petitioner, who contends that a fresh show cause notice should be issued.

4. On comparing the impugned order with the show cause notice, the contention of learned counsel for the petitioner that the show cause notice did not deal with defect no.2 is liable to be accepted. Therefore, the impugned order is unsustainable as regards defect no.2. Nonetheless, as long as the petitioner is provided an opportunity to respond to the issue raised in the order by treating it is a show cause notice, no prejudice would be caused. While submitting such reply, it is however necessary that all contentions be left open to the petitioner.

5. For reasons set out above, W.P.No.15478 of 2024 is disposed of by directing that the impugned order be treated as a show cause notice as regards defect no.2. The petitioner is permitted to submit a reply thereto within ***fifteen days*** from the date of receipt of a copy of this order. While submitting such reply, all contentions are left open to the petitioner. 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 ***three months*** from the date of receipt of the petitioner's reply. No costs. Consequently, W.M.P.Nos.16834 and 16835 of 2024 are closed.

21.06.2024

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

To

State Tax Officer
Avinashi Road Circle,
Coimbatore.

SENTHILKUMAR RAMAMOORTHY,J

rna

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