IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15827 of 2024
and W.M.P.Nos.17253 & 17254 of 2024

M/s.Indian Oil LNG Private Limited,
Represented by M.Palanivel,
Chief Executive Officer,
Survey No.7/3B, Kamraj Port, Vallur Post,
Ponneri, Tiruvallur-600 120. .. Petitioner

-vs-

1. Assistant Commissioner (ST),
Cholavaram Assessment Circle,
Room No.109, 1st floor,
Integrated Commercial Taxes Building,
Elephant Gate, Wall Tax Road,
Chennai-600 003.

2.Assistant Commissioner (ST),
Broadway Assessment Circle,
Integrated Commercial Taxes Building,
Elephant Gate, Wall Tax Road,
Chennai-600 003. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order dated 25.04.2024 having reference No. GSTIN/ 33AADCI8593E1ZG/2018-19 along with its summary in Form DRC-07 bearing reference No. ZD330424204649G dated 25.04.2024 passed by the first respondent and quash the same as the same being passed in violation of the principles of natural justice and is arbitrary and without authority of law.

For Petitioner : Mr.G.Gokul Kishore

For Respondents : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An order dated 25.04.2024 is assailed on the ground that the petitioner was not provided a reasonable opportunity to contest the tax demand on merits.

2. Pursuant to an audit, show cause notice dated 22.12.2023 was issued to the petitioner calling for a response in respect of seven audit observations. The petitioner replied to such show cause notice on

16.02.2024 by enclosing reply dated 18.12.2023, which was submitted in response to the audit report. The petitioner also submitted additional documents under letter dated 22.04.2024. The impugned order was issued about three days later on 25.04.2024.

3. Learned counsel for the petitioner submits that the petitioner is engaged in unloading, storage and regasification of liquified natural gas (LNG), which is imported by Indian Oil Corporation Limited. He further submits that the plant was being installed and commissioned during financial year 2018-2019. As a consequence, he submits that there was marginal outward supply during the relevant period. He points out that the petitioner had responded to each audit observation. In particular, he points out that the petitioner had explained that the amount shown towards trade payables includes a sum of Rs.398,11,81,718/- which represented amounts payable to EPC contractors in relation to the supply and installation of capital goods. In spite of such reply, learned counsel submits that an aggregate sum of Rs.470,38,00,000/- was treated as taxable and GST was imposed on such basis. Learned counsel points out that the GST imposed

under this head is about Rs.84 crores out of the total GST demand of about Rs.100 crores. Learned counsel also points out that the documentation was voluminous and that it was not possible to provide copies of every invoice to the assessing officer within the limited time available. He points out that substantially similar issues were raised for the subsequent assessment period, but proceedings were dropped by accepting the petitioner's explanation. On instructions, learned counsel submits that the petitioner agrees to remit Rs.50,00,000/- towards the disputed tax demand as a condition for remand.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. He points out that principles of natural justice were complied with by issuing a copy of the audit report to the petitioner and by issuing show cause notice dated 22.12.2023. He further submits that the petitioner's replies dated 18.12.2023 and 16.02.2024 were taken into consideration while issuing the impugned order.

5. On perusal of the impugned order, it is clear that seven tax

proposals are dealt with therein. Out of these tax proposals, the 4th proposal pertains to sundry creditors. On this issue, the assessing officer took into account the payables of Rs.470,38,00,000/- and treated such payables as taxable under applicable GST enactments. Such conclusion was reached by recording as under:

> "*Observation of the Adjudication Officer:*
>
> *The reply and the documents (list of excel sheet) filed by the taxpayers were carefully examined. In their reply they have stated that Rs.470,38,00,000/- includes outstanding liability provision provided as on 31.3.2019 against amount payable excluding taxes to EPCC contractors. They have also filed a statement mentioning the name of the dealers and other details. They have not filed any copy of documents to verify the genuineness of the contentions now putforth by the taxpayers. Further in the remarks column they hae reported that 'Ledger copy for accounting of invoices and payment'. They have not filed the copy of invoices and the proof for payment made. In respect of others (Rs.29456381) they have mentioned that vendors are huge in number, not able to provide ledgers. In this particular expense, they have not even filed the ledger copy also. They have not filed any copy of*

documents for verification such as copy of contract agreements made by the company with other construction companies, 80% of the payment made, GST paid details, etc. Without furnishing any documents, the contentions now putforth by the taxpayers are not accepted. On 5.4.2024, the representative of the company appeared, at the time of appearance also, requested to file the list along with copy of documents in chronological order for verification. But till the date, the taxpayers have not filed the list along with copy of documents. Hence, I hereby confirmed the proposal. "

The petitioner's reply was to the effect that a sum of Rs.398,11,81,718/- was the provision made in respect of amounts payable to EPC contractors. The subsequent reply dated 22.04.2024 and documents annexed thereto were not noticed in the impugned order. Learned counsel submitted that upon the relevant goods being supplied and installed, payments would be made and the value thereof would be shown in the balance sheet as capital assets. Even assuming that sundry creditors were not paid for 180 days, at worst, the corresponding ITC would be reversible. The conclusion that the aggregate sum of Rs.470,38,00,000/- is taxable merely because the petitioner had not placed on record all necessary documents is therefore untenable. This amount constitutes about 85% of the total demand. Interference with the impugned order is, therefore, warranted.

6. The petitioner cannot be absolved of complete responsibility for the current state of affairs in as much as the petitioner did not submit all necessary documents. Therefore, it is necessary to put the petitioner on terms so as to safeguard revenue interest to some extent.

7. For reasons aforesaid, the impugned order dated 25.04.2024 is set aside subject to the condition that the petitioner remits a sum of Rs.50,00,000/- (Rupees fifty lakhs only) within a period of 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. Upon receipt thereof and upon being satisfied that a sum of Rs.50,00,000/- was received towards the disputed tax demand, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of four months from the date of receipt of additional documents from the petitioner.

8. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

26.06.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J

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