IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16689 of 2024
and W.M.P.Nos.18330 & 18331 of 2024

Tvl. Sreeram Spheroids and Graphites Private Limited,
GSTIN:33AAPCS2522P1ZY,
Represented by its Managing Director
Mr.Venkatesan Deenathayalan,
SF No.820/1 2, Samanaickenpalayam,
Vellamadai Post, Coimbatore-641 110. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Periyanaickenpalayam Circle,
Commercial Tax Building,
Dr.Balasundaram Road,
Coimbatore-641 018. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order in Form DRC-07 bearing reference number ZD331223293501Q/2017-18 dated 31.12.2023 issued by the Respondent and quash the same.

For Petitioner : Mr.C.Derrick Sam

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

ORDER

An order in original dated 29.12.2023 is challenged in this writ petition. Upon receipt of show cause notice dated 29.09.2023 relating to about 10 defects, the petitioner submitted replies dated 16.12.2023 and 28.12.2023. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner submits that the highest tax proposal, which was confirmed in the impugned order, relates to the mismatch between the taxable turnover reported in GSTR 9 and that reported in GSTR 3B. Learned counsel contends that such disparity arose on account of the inadvertent error in reflecting credit notes in the GSTR 1 and GSTR 3B returns of the petitioner. While filing the annual return in GSTR 9, learned counsel submits that the credit notes were duly reflected therein. Upon taking note of such credit notes, he contends that the mismatch stands duly explained. He also points out that the impugned order contains a patent error in as much as tax of Rs.1,17,31,242/- was imposed instead of treating

the said differential amounts as the taxable supply and imposing tax thereon at the applicable rate. He further submits that defect no.5 relates to interest for belated filing of GSTR 3B returns and that the petitioner accepts liability in such regard and would discharge the same subject to waiver, if any, pursuant to the recommendations of the GST Council. On instructions, he also submits that the petitioner agrees to remit 10% of the disputed tax demand in respect of defect nos.9 and 10 as a condition for remand.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the audit report was made available to the petitioner. He also submits that principles of natural justice were complied with and that the petitioner's reply was taken into consideration.

4. On examining the impugned order, as regards the mismatch between the taxable turnover reported in GSTR 9 and GSTR 3B, it was recorded that the differential turnover is Rs.1,17,31,242/-. Instead of treating such differential turnover as taxable supply and computing tax thereon at the

applicable rate, it appears that tax of Rs.1,17,31,242/- has been apportioned between CGST and SGST. By considering the petitioner's reply to the show cause notice, defect no.2, defect no.4, defect no.6, defect no.7 and defect no.8 were dropped. As regards defect no.1, the petitioner has placed on record the annual return whereby the mismatch between GSTR 1 and GSTR 3B was reconciled by reflecting the value of credit notes. As regards defect no.5, the petitioner shall pay the interest, as agreed to, unless waiver is granted in the interregnum pursuant to the recommendations of the GST Council. As regards defect nos.9 and 10, the petitioner has agreed to remit 10% of the disputed tax demand as a condition for remand.

5. In the above facts and circumstances, the impugned order dated 29.12.2023 is partly set aside only in so far as defect no.1, defect no.3, defect no.9 and defect no.10 are concerned subject to the petitioner remitting 10% of the disputed tax demand as regards defect no.9 and defect no.10 within 15 days from the date of receipt of a copy of this order. Upon being satisfied that 10% of the disputed tax demand, as stated above, was received, 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 a copy of this order.

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

09.07.2024

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

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SENTHILKUMAR RAMAMOORTHY,J

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To

The Assistant Commissioner (ST),
Periyanaickenpalayam Circle,
Commercial Tax Building,
Dr.Balasundaram Road,
Coimbatore-641 018.

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