IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16377 of 2024 &
WMP Nos.17942 & 17943 of 2024

Switzer Instruments Pvt. Ltd.
Represented by its Managing Director Mr.L.C.Venkatrangan,
Flat No.A1, Thirumalai Apartments,
No.29, Thanikachalam Road, T.Nagar,
Chennai,Tamil Nadu-600 017. ... Petitioner

vs

The Assistant Commissioner (FAC),
Intelligence I, TN Commercial Taxes Department,
Room No.133, I Floor, Commercial Taxes Building,
Greams Road, Chennai, Tamil Nadu-600 006. ...
Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records of the impugned order dated 09.03.2024 with the reference GST/33AAKCS6322G1ZG/2018-19 in the files of the Respondent, quash the same.

For Petitioner : Mr.S.Ramamurthy

For Respondent : Mr.C.Harsha Raj
Addl. Govt. Pleader (T)

ORDER

In this writ petition, an order dated 09.03.2024 in respect of assessment period 2018-19 is challenged on the ground of jurisdiction and non-consideration of the petitioner's reply.

2. The petitioner had constructed an apartment block consisting of 25 dwelling units. In relation thereto, an intimation dated 30.09.2023 and show cause notice dated 16.10.2023 were received. The petitioner replied thereto on 05.02.2024. The order impugned herein was issued thereafter on 09.03.2024.

3. Learned counsel for the petitioner submits that the show cause notice was issued by an officer called Maheswari Ganesan, whereas the impugned order was issued by a different officer called Tmt.D.Nalini. He contends that this violates principles of natural justice. He also contends that prejudice was caused to the petitioner by this process of adjudication inasmuch as issues on which the officer who issued the show cause notice had decided in favour of the petitioner in respect of earlier assessment periods were decided

against the petitioner by the officer who eventually issued the impugned assessment order. He also submits that the petitioner had provided all relevant documents, such as the sale deed, completion certificate and construction agreement to establish that the entire consideration was received after the issuance of the completion certificate. He contends that these documents were not duly considered while issuing the impugned order. His last contention is that the ingredients of Section 74 of applicable GST statutes are not contained in the show cause notice. Without prejudice to these contentions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He submits that the petitioner's reply dated 05.02.2024 was duly taken into consideration. He also points out that admittedly a personal hearing was offered. Merely because the assessing officer did not accept the contentions of the petitioner, he submits that the discretionary jurisdiction of this Court cannot be invoked.

5. The petitioner has placed on record one of the sale deeds. He has also placed on record the completion certificate and the construction agreement. *Prima facie*, these documents indicate that consideration was received after the completion certificate was issued. However, it appears that the construction agreement was executed in the year 2021, which is much later than the date of execution of the sale deed. These factual aspects are required to be closely examined by the assessing officer so as to ascertain whether the assertion of the petitioner that the entire consideration was received after the completion certificate was issued is correct. Since the impugned order does not appear to have taken these aspects into consideration, reconsideration is required by putting the petitioner on terms.

6. For reasons aforesaid, the impugned order dated 09.03.2024 is set aside on condition that the petitioner remits 10% of the disputed tax demand within four weeks from the date of receipt of a copy of

this order. Upon receipt thereof, 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 a copy of this order. All contentions are left open to the petitioner, including objections with regard to jurisdiction.

7. W.P.No.16377 of 2024 is disposed of on the above terms. Consequently, WMP Nos.17942 & 17943 of 2024 are closed. No costs.

05.06.2024

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 (FAC),
Intelligence I, TN Commercial Taxes Department,
Room No.133, I Floor, Commercial Taxes Building,
Greams Road, Chennai, Tamil Nadu-600 006.

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