IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.16374 of 2024 and
W.M.P.Nos.17937 & 17938 of 2024

M/s.Surral Surface Coating Pvt. Limited,
Represented by its Director,
Plot No.20-21, Baskar Nagar,
Velanur, Avadi, Chennai-600 062. .. Petitioner

-vs-

The Assistant Commissioner (ST),
Thirumullaivoyal Assessment Circle,
Integrated Commercial Tax Buildings,
No.32, Elephant Gate Bridge Road,
Chennai-600 003. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in GSTIN 33AAMCS1832R2ZT/2018-19, quash the order dated 27.04.2024 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.V.Prashanth Kiran, Govt. Adv. (T)

ORDER

An assessment order dated 27.04.2024 is challenged on the ground that the petitioner was not provided a personal hearing. Pursuant to show cause notice dated 27.12.2023, the petitioner filed a reply dated 23.01.2024. The impugned order was issued thereafter without providing a personal hearing to the petitioner.

2. Learned counsel for the petitioner submits that tax liability of Rs.13,82,565/- was imposed towards the IGST component. He submits that GSTR 3B returns of the petitioner clearly indicate that Input Tax Credit (ITC) of Rs.1,57,22,386/- was available and that, therefore, excess ITC was not availed of. He points out that the petitioner accepted the liability as regards SGST and CGST and made payments towards discharge thereof. On account of a personal hearing not being given, learned counsel seeks another opportunity as regards the IGST component. On instructions, he submits that the petitioner agrees to remit a sum of Rs.75,000/- as a condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that the petitioner's reply was taken into consideration by the assessing officer. In such reply, he points out that the petitioner did not state that the available ITC and the ITC availed of tallied.

4. On examining the impugned order, it appears that a personal hearing was not offered because the petitioner did not request for a personal hearing. As per sub-section (4) of Section 75 of applicable GST enactments, a personal hearing is required to be provided either if requested for or if an order adverse to the tax payer is proposed to be issued. For such reason, the matter requires reconsideration. By taking into account the fact that the petitioner accepted the liability as regards SGST and CGST components of the confirmed tax demand, remand is required only with regard to the IGST component. However, as contended by learned Government Advocate, the petitioner failed to state in the earlier reply that the ITC availed of tallied with the available ITC. Therefore, the petitioner should be put on terms.

5. For reasons set out above, the impugned order dated 27.04.2024 is partly set aside subject to the petitioner remitting a sum of Rs.75,000/- within 15 days from the date of receipt of a copy of this order only in so far as the confirmed tax demand, interest and penalty relating to the IGST component is concerned. As a consequence, the matter is remanded for reconsideration. The petitioner is permitted to file an additional reply within the aforesaid period. Upon receipt thereof and upon being satisfied that a sum of Rs.75,000/- in respect of IGST 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 the petitioner's reply.

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

04.07.2024

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

The Assistant Commissioner (ST),
Thirumullaivoyal Assessment Circle,
Integrated Commercial Tax Buildings,
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SENTHILKUMAR RAMAMOORTHY,J

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