IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16186 of 2024
and W.M.P.Nos.17727 & 17728 of 2024

Evergreen Harvest Agro Products Private Limited,
Rep. By its Manager Mr.V.Murugan
No.6/951, Mogappair West,
Chennai 600 037. ... Petitioner

-vs-

1.The Deputy Commercial Tax Officer,
J.J.Nagar: Central-II: Chennai Central
No.333, 3rd Floor,
Integrated Building for Commercial Taxes and
Registration Department,
Nandanam, Chennai 600 035.

2.The Assistant Commissioner (ST),
J.J.Nagar Assessment Circle,
No.333, 3rd Floor,
Integrated Building for Commercial Taxes and
Registration Department,
Nandanam, Chennai 600 035. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the 1st respondent in Reference Number: ZD3304242015304 / 2018-19 dated 25.04.2024 and quash the same as arbitrary, illegal.

For Petitioner : Mr.S.Ramanan

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

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ORDER

The petitioner states that it is engaged in the business of planting, harvesting and trading of mushrooms. The petitioner asserts that the sales made by the petitioner are not taxable supplies under applicable GST statutes. Upon receipt of notice dated 16.06.2021 with regard to supply under e-way bills showing the value as zero, the petitioner replied on 27.07.2021. After a hiatus of about three years, the petitioner states that show cause notice dated

23.01.2024 was received. Such show cause notice was replied to on 30.01.2024 by uploading relevant documents. According to the petitioner, the impugned order was issued thereafter without providing a personal hearing to the petitioner.

2. Learned counsel for the petitioner referred to the petitioner's replies dated 27.07.2021 and 30.01.2024. He pointed out that the petitioner had uploaded the reply to the show cause notice and enclosed a copy of the relevant e-way bills and the customs tariff heading under which the petitioner's product falls. Since the impugned assessment order was issued without providing a personal hearing, learned counsel submits that the order calls for interference. He also points out a copy of the reply to the show cause notice was hand-delivered in the office of the Assistant Commissioner on 30.01.2024, but a personal hearing was not provided on account of the non availability of the DCTO on the said date.

3. Mr.C.Harsha Raj, learned Additional Government Pleader,

accepts notice for the respondents. On instructions, he states that the petitioner visited the office of the second respondent and handed over a copy of the reply on 30.01.2024.

4. The only question that warrants consideration is whether a personal hearing was offered to the petitioner. The show cause notice indicates that the date of personal hearing was fixed on 30.01.2024. It appears that the petitioner handed over a copy of a reply on the said date in the office of the Assistant Commissioner. However, on perusal of the impugned order, while such order refers to the petitioner's reply, there is no reference to a personal hearing on 30.01.2024. In view of non compliance with the mandatory prescription under sub-section (4) of Section 75 of applicable GST enactments, the order calls for interference.

5. For reasons set out above, impugned order dated 25.04.2024 is set aside and the matter is remanded for re-consideration. The first

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.

6. W.P.No.16186 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.17727 and 17728 of 2024 are closed.

03.07.2024

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

To

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