IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17070 of 2024
and W.M.P.Nos.18817 & 18819 of 2024

M/s.Bajaj Auto Ltd
Represented by its Vice President (Taxation) Mr.Chetan Joshi,
No.129, No.10/131, Bharani Business Centre,
Dr.Bhanumathi Ramkrishna Road,
Saligramam, Chennai,
Tamil Nadu 600 093. ... Petitioner

-vs-

The Assistant Commissioner (ST),
K.K.Nagar Assessment Circle,
Greams Road,
Annexe Building,
Chennai 600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for records relating to the impugned order bearing reference no. GSTIN /

33AADCB2923M1ZS/2018-19 dated 13.03.2024 confirming the demand of GST of Rs.37,60,368-00 along with interest amounting to Rs.33,49,098-00 and imposed penalty of Rs.36,036-00, passed by the respondent as being contrary to Articles 19(1)(g) and 265 and in violation of provisions of CGST Act and Rules made thereunder and quash the same.

For Petitioner : Mr.Makarand P.S.Joshi

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

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ORDER

An order in original dated 13.03.2024 is challenged in this writ petition both on the ground of non consideration of the petitioner's reply and on the ground that the petitioner was not called upon to produce documents forming the basis of the order.

2. The petitioner received show cause notice dated 14.12.2023

calling upon the petitioner to show cause with regard to the disproportionately low outward supply turnover. By such show cause notice, the petitioner was also called upon to submit the documents specified therein. By reply dated 09.01.2024, the petitioner provided an explanation as to why the outward supply value is lower than the purchase value. The petitioner also enclosed the documents requested for. The impugned order was issued in these circumstances thereafter.

3. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the reasons specified therein for confirming the tax proposal is limited to stating that the petitioner did not produce the auditor certified financial statement for Tamil Nadu. By referring to the show cause notice and the documents called for in such notice, learned counsel contends that the respondent did not call upon the petitioner to produce the auditor certified financial statement for Tamil Nadu. All the documents called for in such show cause notice were submitted. Learned

counsel further submits that a personal hearing was not provided to the petitioner.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that a personal hearing was offered on 01.03.2024 by reminder-1 dated 26.02.2024. He also contends that the petitioner did not comply with the requirements of Circular No.183 and that such circular becomes applicable in terms of paragraph 4.1.1 thereof.

5. At the outset, I deal with the contention that Circular No.183 was not complied with. Paragraph 4.1.1, which was referred to by learned Additional Government Pleader, is applicable in cases wherein the difference in ITC, as between the data in the GSTR 3B returns of the petitioner and the auto populated GSTR 2A, exceeds Rs.5,00,000/-. In this case, on perusal of the show cause notice and the impugned order, the tax proposal pertains to the disproportionately low outward supply value and not the Input Tax

Credit claimed by the petitioner. Therefore, Circular No.183 and, in particular, paragraph 4.1.1 thereof is not applicable.

6. The operative portion of the impugned order is as under:

> *"Their contention was carefully examined. They have produced consolidated profit & loss account. They have declared Tamil Nadu supply turnover for Rs.2,47,50,570.00 and paid tax for Rs.39,25,122.00 under IGST: Rs.2,64,994.00 each under CGST & SGST. Whereas, they have not produced auditor certified financial statement for Tamil Nadu, to verify whether suppression at sale point. In the absence of such vital records, the proposal is hereby confirmed."*

7. The above extract discloses that the tax proposal was confirmed by recording that the petitioner failed to produce the auditor certified financial statement for Tamil Nadu. On examining the show cause notice, it is noticeable that about seven documents were called for from the petitioner, but the auditor certified financial statement for Tamil Nadu is not one of them. It is also noticeable from the petitioner's reply that the petitioner had explained why the

outward supply turnover is low. The impugned order does not contain any discussion or findings with regard to the explanation provided by the petitioner. In these circumstances, the impugned order cannot be sustained and the matter requires re-consideration.

8. For reasons set out above, impugned order dated 13.03.2024 is set aside and the matter is remanded for re-consideration. The petitioner is permitted to submit additional documents within ***fifteen days*** 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 the additional documents from the petitioner.

9. W.P.No.17070 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18817 and 18819 of 2024 are closed.

15.07.2024

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

To

The Assistant Commissioner (ST),
K.K.Nagar Assessment Circle,
Greams Road,
Annexe Building,
Chennai 600 006.

<u>SENTHILKUMAR RAMAMOORTHY,J</u>

rna

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