IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18287 of 2024
and W.M.P.Nos.20069 & 20071 of 2024

M/s.Paramount Shipping Services Pvt. Ltd.,
Represented by its Managing Director
Mr.A.V.Vijayakumar,
No.163, 3rd floor,
Thambu Chetty Street,
Chennai-600 001. ... Petitioner

-vs-

Assistant Commissioner (ST),
Broadway Assessment Circle,
Room No.304, 3rd floor,
Integrated Commercial Taxes Office Complex,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai-600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to impugned order bearing reference no. GSTIN 33AAECP5649R1ZQ/2018-19/ARN No.AD331223072928Y Dated 30.04.2024 along with DRC - 07 bearing reference No. ZD330424260243S Dated 30.04.2024 passed by the respondent and quash the same.

For Petitioner : Mr.G.Natarajan

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

ORDER

An order in original dated 30.04.2024 is challenged both on the ground of lack of jurisdiction and on the ground of non application of mind. Pursuant to show cause notice dated 29.12.2023, the petitioner submitted reply dated 23.01.2024. By such reply, the petitioner dealt with each defect indicated in the show cause notice. The impugned order was issued thereafter.

2. Learned counsel for the petitioner referred to the screen shot of the GST portal and pointed out that a show cause notice was first issued on 29.12.2023. Such show cause notice was dropped on 16.04.2024. In these circumstances, he submits that the respondent did not have the authority to proceed further and issue the impugned order. Without prejudice to this contention, learned counsel submits that the reply dated 23.01.2024 was not duly considered and that the impugned order was issued mechanically by

repeating the same observation in respect of each defect dealt with in the impugned order. He refers to the Reverse Charge Mechanism (RCM) liability issue and the trade payables issue by way of illustration.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that principles of natural justice were complied with and that the petitioner's reply was taken into consideration while issuing the impugned order.

4. On examining the impugned order, it is evident that the observation of the proper officer in respect of each issue dealt with in the impugned order is identical. The reply of the tax payer and the observation of the proper officer in respect of the RCM liability issue and the trade payables issue are set out below:

> *"<u>Reply of the Taxpayer</u>*
>
> *10. Reply to RCM Liability:*
>
> *In GSTR-3B we already declared in Inward Supplies liable to Reverse Charges (RCM). RCM amount is including the Lorry Freight, Loading & Unloading*

and Truck Expenses. We have declared paid more amounts under RCM as compared to the amount mention in the notice.

Observation of the Proper Officer:

The reply filed by the taxpayer has been examined carefully. They have submitted only reconciliation statement. They have not filed proper documentary record further to substantiate their plea. They have not produced any vital supporting documents to verify the genuineness of turnover reporting and ***input credit availed/outward and inward supply****. In the absence of such records, the proposal is hereby confirmed.*

Reply of the Taxpayer:

15. Reply to Current Liabilities (Trade Payables):

All Trade payable are paid in with in specified time under Section 16(2). Moreover in your notice you have mention the amount Rs.6,05,27,470/- which includes the payables of all our branches i.e. Bangalore *and Nellore which have got separate GSTN number. The Trade payable to GSTN no.33AAECP5649R1ZQ is only Rs.6,09,58,059/-. We herewith furnishing the details for the trade payable pertaining to the Above GSTN number. All the trade payables are below 180 days. Hence, the reversal of ITC does not arise.*

Observation of the Proper Officer:

The reply filed by the taxpayer has been examined carefully. They have submitted only reconciliation statement. They have not filed proper documentary record further to substantiate their plea. They have not produced any vital supporting documents to verify the genuineness of turnover reporting and ***input credit availed/outward and inward supply****. In the absence of such records, the proposal is hereby confirmed. "*

As is evident from the above extracts, the petitioner replied on the RCM liability issue by stating that the amounts declared and paid under RCM are greater than the amount mentioned in the notice. The observation of the proper officer on this issue reflects complete non application of mind. Likewise, as regards trade payables, the petitioner replied stating that all trade payables are below 180 days. Once again, without applying his mind to the reply, an identical finding is recorded. Since the impugned order is vitiated by complete non application of mind and non consideration of the petitioner's reply, such order is liable to be set aside.

5. For reasons aforesaid, the impugned order dated 30.04.2024 is set aside and the matter is remanded for reconsideration. After providing a reasonable opportunity to the petitioner, including a personal hearing, the respondent is directed to 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.

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

10.07.2024

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

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