IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16988 of 2024
and W.M.P.Nos.18716 & 18719 of 2024

Tvl. Boomi Agro Needs,
No.76/1A1B, Arani Road, Chetpet,
Tiruvannamalai – 606 801,
Represented by Shri.S.K.Kanagheshwaran,
Managing Partner. ... Petitioner

-vs-

1.The Joint Commissioner of Commercial Tax, (ST),
Vellore Zone, No.4, Bharathiyar Salai,
Fort Round Road,
Vellore – 632 001.

2.The State Tax Officer (ST) (Audit-1)
O/o the Joint Commissioner of
Commercial Tax (ST), Vellore Division,
No.4, Bharathiyar Salai,
Fort Round Road, Vellore – 632 001.

3.The Deputy Commercial Tax Officer,
Polur Assessment Circle,
No.4, Bharathiyar Salai,

Fort Round Road, Vellore – 632 001.

4.The Commissioner of Commercial Tax,
4th Floor, Ehilagam Building,
Kamarajar Road, Chepauk,
Chennai – 5. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to the impugned order bearing Reference No.: ZD330424180880F dated 24.04.2024, passed by the third respondent, quash the same.

For Petitioner : Mr.T.R.Ramesh

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

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ORDER

An order in original dated 24.04.2024 is challenged in this writ petition primarily on the ground that the petitioner's contentions were not taken into account. Pursuant to an audit, observations were communicated to the petitioner on 15.12.2023. For the purposes of this case, the audit observations relating to the classification of tractors and that relating to the mismatch between the petitioner's GSTR 3B returns and the auto populated GSTR 2A are relevant. By explanation dated 11.01.2024, the petitioner stated that the tractors are agricultural and not road tractors. Consequently, it was stated that such tractors are liable to be taxed at 12% and not at 28%. As regards the mismatch issue, the petitioner stated that the suppliers' concerned issued invoices in the following financial year and that the petitioner is entitled to claim Input Tax Credit (ITC) on such basis as per law. Being dissatisfied with such explanation, show cause notice dated 29.02.2024 was issued. The petitioner replied thereto on 07.03.2024 and 18.03.2024. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner referred to Schedule-II and, in particular, chapter heading 8701. He points out that the heading covers all tractors except road tractors along with semi-trailers and engine capacity of more than 1800 CC. By referring to the petitioner's replies, learned counsel points out that the petitioner stated that these tractors are intended for agricultural purposes. He also pointed out that the petitioner had referred to the definitions set out in the Tamil Nadu Government Transportation Code in respect of farm tractor and road tractor. As regards the ITC mismatch issue, learned counsel submitted that the petitioner pointed out that invoices were issued subsequently by the suppliers' concerned and that the petitioner was entitled to avail of ITC on such basis. By referring to the impugned order, he submits that the petitioner's reply was not taken into consideration.

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

accepts notice for the respondents. By referring to the conclusions in the impugned order with regard to the classification issue, he points out that the relevant entries do not define road tractor. By inviting my attention to the photographs of the petitioner's tractors, learned Additional Government Pleader submits that these appear to be road tractors and not farm tractors.

4. In the petitioner's reply dated 07.03.2024, the petitioner has set out elaborate reasons for classifying the tractors as farm tractors in internal pages 3 to 6 thereof. The impugned order also sets out the petitioner's reply. Thereafter, the following conclusion was recorded:

> *"Conclusion: their explanations and the details were examined.*
>
> *According to entry 207 to GST Rate schedules goods taxable at the rate of 12%, it had been specifically Mentioned that*
> *HSN Code 8701 – Tractor (except road tractors for semi-trailers of engine capacity More than 1800 days CC) is taxable at 12%*
>
> *8701 – Road tractors for semi-trailers of engine capacity more the 1800 CC is taxable at 28%*
>
> *The State Tax Officer (Audit), Vellore*

> *Division, Vellore in the show cause Notice issued in DRC 01 at Page 4 had mentioned that the tax payer had sold the Kubota tractors of modal MU 4501 2WD and MU 4501 4WD having cubic capacity of 2434 (more than 1800 CC, which are taxable at 28%. The taxpayer had not specifically replied for that point.*
>
> *In the copy of invoice enclosed for perusal, the cubic capacity of the Tractor not mentioned.*
>
> *In view of the facts and based on the copies of invoice produced their explanations are not acceptable and the proposal is confirmed."*

5. The above extract discloses that the third respondent did not discuss the petitioner's explanation for classifying it as a farm tractor or record reasons for rejecting such explanation. As regards the ITC mismatch issue, in the petitioner's reply, the petitioner refers to the issuance of invoices after the end of the financial year. On this issue, the third respondent records that the petitioner had stated that ITC matching was not a mandatory requirement for the period July 2017 to March 2019. This was not the contention of the petitioner in the reply. Thus, on both these issues, the petitioner's contentions were not dealt with in the impugned order. For such reason, a remand is

necessary. The petitioner had also contended that the ingredients of Section 74 of applicable GST enactments are not satisfied. There does not appear to be a finding on this issue.

6. For reasons set out above, impugned order dated 24.04.2024 is partly set aside only insofar as the ITC mismatch issue and the rate of tax difference / classification issue are concerned. Consequently, the third 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.

7. W.P.No.16988 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18716 and 18719 of 2024 are closed.

16.07.2024

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Index : Yes / No
Internet : Yes / No

Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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