IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16976 of 2024
and W.M.P.Nos.18696, 18697 & 18698 of 2024

Tvl. Harshini Exports
(Represented by its Proprietor Mr.K.Dhanasekaran),
14/7, South Colony, Kumarapalayam – 638 183. ... Petitioner

-vs-

1.The State Tax Officer (FAC),
Kumarapalayam Assessment Circle,
RDO Office Building, Sankari.

2.The Branch Manager,
Karur Vysya Bank,
No.155-156, Salem Main Road,
Kumarapalayam – 638 183. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on the files of the 1st respondent herein in Form GST DRC-07 with Reference No.: ZD3312232719585 dated 30.12.2023 along with detailed order in GSTIN: 33AABHK1911R1Z7/2017-18 dated 30.12.2023, for the assessment period 2017-18 and quash the same.

For Petitioner : Mr.K.A.Parthasarathy
For Respondent 1 : Mr.T.N.C.Kaushik, AGP (T)

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ORDER

An order in original dated 30.12.2023 is assailed both on breach of principles of natural justice and on merits. The petitioner is engaged in trade relating to textiles. According to the petitioner, materials were purchased in the financial year 2017-18 and a large proportion thereof was sold in the following financial year. The petitioner asserts that GST compliances were entrusted to a consultant. Since the show cause notice and other notices were uploaded on the "view additional notices and orders" tab in the GST portal but not communicated to the petitioner through any other mode, it is stated that the petitioner was unaware of proceedings until May 2024 when a bank attachment notice was served.

2. Learned counsel for the petitioner submits that the impugned

order is patently flawed in as much as the assessing officer confirmed the tax proposal by reference to Rule 30 of applicable GST Rules. He submits that Rule 30 is applicable in limited circumstances wherein goods are supplied to related parties and there is a dispute with regard to the value of supply. He further submits that the petitioner's closing stock would have satisfactorily explained the disparity between the value of inward supply and outward supply. If the assessing officer had called for the details of closing stock by exercising power under Section 70 or Section 71 of applicable GST statutes, he submits that the dispute would have been resolved. Without prejudice, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the first respondent. He submits that principles of natural justice were complied with by issuing intimation dated 31.08.2023, show cause notice dated 30.09.2023 and by offering a personal hearing to the petitioner.

4. On perusal of the impugned order, it is evident that the tax proposal was confirmed on account of the non receipt of objections from the tax payer. It also appears that the assessing officer estimated the outward supply value at 110% of the purchase value by invoking Rule 30 of the CGST Rules, 2017. Learned counsel for the petitioner contended that Rule 30 is not applicable in the circumstances and that the assessing officer could have issued summons and obtained clarification. These facts and circumstances justify re-consideration on terms.

5. For reasons set out above, impugned order dated 30.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand, as agreed to, within ***fifteen days*** from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit a reply to the show cause notice by annexing all relevant documents. Upon receipt of the petitioner's reply and on being satisfied that 10% of the disputed tax demand was received,

the first respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within ***three months*** from the date of receipt of the petitioner's reply. On account of the assessment order being set aside, the bank attachment is raised.

6. W.P.No.16976 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18696, 18697 and 18698 of 2024 are closed.

12.07.2024

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

SENTHILKUMAR RAMAMOORTHY,J

rna

To

1.The State Tax Officer (FAC),

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