IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17213 of 2024 and
W.M.P.Nos.18988 & 18990 of 2024

Tvl. Sri Bhuaneshwari Engineering and Electrical Works,
Represented by its Proprietor Mr.D.Sivakumar,
129/5, Anna Nagar, 4th cross,
Ponnammapet-636 001. ... Petitioner

-vs-

The State Tax Officer,
Office of Assistant Commissioner (ST),
Salem Bazaar Circle. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records on the files of the Respondent herein, in impugned order in Reff.No.ZD3312232917569 dated 31.12.2023 along with order in Reff.No. ZD3312232917569 under section 73 dated 31.12.2023 for tax period 2017-18 in connection with GSTIN 33CTYPS4080F1Z5 and quash the same.

For Petitioner : Mr.N.Chandirasekar

For Respondent : Mr.V.Prashanth Kiran, Govt. Adv. (T)

ORDER

An order in original dated 31.12.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. Upon receipt of show cause notice dated 27.04.2023, the petitioner replied on 03.05.2023 by stating that an inadvertent error was committed while filing the GSTR 3B return. The impugned order was issued thereafter on 31.12.2023.

2. Learned counsel for the petitioner submits that the tax liability arose on account of the petitioner committing an inadvertent error while filling up the GSTR 3B return in as much as the entry was erroneously made in the column relating to Reverse Charge Mechanism (RCM) instead of the column relating to all other ITC. If provided an opportunity, the petitioner would be able to establish that only eligible Input Tax Credit (ITC) was availed of. Learned counsel further submits that an error was made while entering the details of outward supplies in the GSTR 9 annual return. On

instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 27.04.2023 and by offering a personal hearing.

4. On examining the impugned order, it is clear that the tax payer's reply was noticed. However, it is recorded that the tax payer had not reversed the ITC relating to purchases falling under the RCM. The petitioner's reply is terse and does not contain sufficient details about the nature of the inadvertent error. The impugned order appears to have been issued in those circumstances. By taking into account the contention of learned counsel for the petitioner that an inadvertent error was committed by making the entry in the column relating to RCM instead of the column relating to all other ITC, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits by putting the petitioner on terms.

5. Therefore, the impugned order dated 31.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit an additional reply to the show cause notice within the aforesaid period. Upon receipt of such additional reply and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the additional reply from the petitioner. In view of the assessment order being set aside, the bank attachment is raised.

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

05.07.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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<u>SENTHILKUMAR RAMAMOORTHY,J</u>

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To

The State Tax Officer,
Office of Assistant Commissioner (ST),
Salem Bazaar Circle.

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