IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.08.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18176 of 2024
and W.M.P.Nos.19960 & 19964 of 2024

M/s.Star Yarn,
Represented by its Managing Partner,
Mrs.S.Sree Aarthi,
55/2, Pandian Street,
Chennimalai, Erode-638 051. ... Petitioner

-vs-

The State Tax Officer,
Chennimalai Circle,
No.300, Bhawani Road,
Perundurai-638 052,
Erode, Tamil Nadu. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the impugned order in Ref. No. ZD330424067201V dated 08.04.2024 under Section 73 of the CGST/TNGST Act, 2017 and uploaded along with the summary of the order in DRC07 for the Financial Year 2022-23 from the files of the respondent herein and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order in original dated 08.04.2024 is the subject of challenge in this writ petition. The petitioner states that supplies were received from outside India. Initially, the petitioner states that the liability in respect thereof was nebulous and therefore, the petitioner discharged liability belatedly. When notice in Form ASMT 10 was issued to the petitioner upon scrutiny of returns, it is stated that the petitioner replied by pointing out that payments were made on Reverse Charge Mechanism (RCM) basis towards lorry freight charges and sea freight charges on the dates indicated in such reply. It is further stated that the petitioner was unable to participate in proceedings because the show cause notice and other communications were merely uploaded on the common portal.

2. Learned counsel for the petitioner relies on Circular No.211/5/2024-GST dated 26.06.2024 (Circular No.211/2024) and contends that it was clarified by such Circular that Input Tax Credit (ITC) may be availed of by a recipient of services on RCM basis with reference to

the date on which the tax invoice is issued by such recipient. Learned counsel contends that such invoices were issued by the petitioner, as the recipient of services, in terms of paragraph 2.5 of the above mentioned circular. Therefore, she seeks another opportunity for the petitioner to explain the above to the assessing officer. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She submits that principles of natural justice were complied with by issuing intimation dated 18.07.2023, show cause notice dated 05.02.2024 and by also issuing personal hearing notices dated 07.03.2024 and 15.03.2024. She further submits that the tax proposal was confirmed because the tax payer failed to reply to the show cause notice.

4. On examining the impugned order, it is clear that the tax proposal was confirmed in view of the failure of the tax payer to respond to the show cause notice. Such tax proposal was confirmed by relying on Section 16(4)

of applicable GST enactments.

5. The petitioner has placed on record Circular No.211/2024. From paragraph 2.5 thereof, it appears that the CBIC has clarified that the recipient of services is required to issue invoices in terms of Section 31(3)(f) of the CGST Act and pay taxes on the same under RCM. It also indicates that ITC may be claimed if the recipient is in possession of a tax invoice. Paragraph 2.6 thereof further provides that the time limit for availment of ITC in such cases shall be the financial year of issuance of such invoice. Since learned counsel for the petitioner contends that all necessary invoices were issued and are available, it is just and appropriate that an opportunity be provided to the petitioner by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 08.04.2024 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 a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's

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 petitioner's reply.

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

01.08.2024

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

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SENTHILKUMAR RAMAMOORTHY,J

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To

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No.300, Bhawani Road,
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