IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17858 of 2024
and W.M.P.Nos.19594, 19596 & 19597 of 2024

M/s.Rajasurya Engineering Enterprises,
Represented by its Managing Partner,
Mr.N.Devadass
No.9, Peria Kasi Koil Kuppam, Beach Road,
Ennore, Chennai 600 057. ... Petitioner

-vs-

1.The Assistant Commissioner (ST)(FAC)
Thiruvottiyur Assessment Circle,
Room No.215, Door No.32, 2nd Floor,
Integrated Commercial Taxes Building,
Elephant Gate Bridge Road,
Vepery, Chennai 600 003.

2.The Branch Manager,
Indian Bank,
No.5, Dwaraka Nagar,
Manali New Town,
Manali, Edayanchavadi,
Chennai 600 103. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the impugned proceeding of the first respondent in GSTIN: 33AAIFR8856P1ZB / 2017-2018 dated 30.12.2023 and the Summary of the Order in Form GST DRC-07 dated 30.12.2023 issued in Reference No. ZD331223271016V and quash the same as passed contrary to the principles of natural justice and also against the provisions of the CGST / TNGST Act, 2017.

For Petitioner : Mr.P.Rajkumar

For Respondent 1 : Mr.V.Prashanth Kiran, GA (T)

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ORDER

An order in original dated 30.12.2023 is assailed on the ground that the petitioner's annual return and the payment of taxes in respect of the additional taxable turn over of Rs.57.80 lakhs was not taken into consideration. The petitioner states that, while filing the GSTR 3B returns, the turn over of Rs.57.80 lakhs was not reported inadvertently and that the tax thereon had not been paid. Upon realizing this, while filing the annual return in Form GSTR 9, it is stated that the entire turn over of Rs.97,00,087/- was reported as the taxable turn over and taxes were duly paid. The present writ petition was filed in these facts and circumstances against the order dated 30.12.2023.

2. Learned counsel for the petitioner invited my attention to the annual return. He points out that upon payment of taxes on the differential turn over of Rs.57.80 lakhs, the petitioner also remitted interest thereon. Consequently, he submits that the rectification petition dated 28.02.2024 was allowed by issuing the rectification order dated 29.02.2024. Since the petitioner failed to respond to the show cause notice or participate in proceedings culminating in the

impugned order, on instructions, learned counsel submits that the petitioner agrees to remit 5% of the disputed tax demand under the impugned order as a condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the first respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 07.08.2023 and by also issuing a personal hearing notice dated 15.09.2023. By referring to the impugned order, he points out that the petitioner was called upon to provide the documents listed in the impugned order at page 25 of the typed set, but the petitioner failed to submit such documents.

4. On examining the petitioner's annual return, it appears that the petitioner reported the taxable turn of Rs.97,00,087/- and paid taxes thereon. *Prima facie*, this appears to include the differential turn over of Rs.57.80 lakhs. However, this is a matter that requires

verification by the assessing officer on scrutiny of all relevant returns and other documents. The rectification order is also on record. Such order rectifies the order dated 26.09.2023 after noticing the additional tax payment made by the petitioner. In these circumstances, the impugned order warrants re-consideration subject to putting the petitioner on terms for non participation earlier.

5. Therefore, impugned order dated 30.12.2023 is set aside on condition that the petitioner remits 5% 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. Upon receipt of the petitioner's reply and on being satisfied that 5% 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 order within ***three months*** from the date of receipt of the petitioner's reply. In view of the assessment order

being set aside, the bank attachment is raised.

6. W.P.No.17858 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.19594, 19596 and 19597 of 2024 are closed.

29.07.2024

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

To

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