IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18003 of 2024
and W.M.P.Nos.19743 & 19746 of 2024

M/s.Eshwaree Engineering,
Represented by its Managing Partner Mr.G.S.Sankar,
No.13A, Boopathy Nagar Industrial Area,
Keelkattalai, Chennai 600 117. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Madipakkam Assessment Circle,
Room No.229, 2nd Floor,
Integrated Commercial Taxes Office Building,
Govt. Farm Village, Nandanam,
Chennai 600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records in the order passed by the respondent in the order dated 29.04.2024 in GSTIN: 33AACFE4939L1ZA/2018-19 and the Summary of Order in Form DRC-07 dated 29.04.2024 in Ref.No. ZD3304242369781 and quash the orders as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

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

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ORDER

An order in original dated 29.04.2024 is assailed on the ground that the order is unreasoned. The petitioner asserts that zero rated supplies were made to a SEZ unit. However, while filing the GSTR 3B returns, the supply value of Rs.44,22,163/- was erroneously reflected in table 3.1(c) instead of table 3.1(b) of the GSTR 3B returns. Upon receipt of show cause notice dated 28.12.2023 alleging that excess Input Tax Credit was claimed, by reply dated 13.02.2024, the petitioner asserted that only eligible Input Tax Credit was claimed and provided the particulars in a table. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner referred to the impugned order and pointed out that the tax payer's reply was extracted therein. Thereafter, he submits that the assessing officer merely concluded that the tax payer had not reversed Input Tax Credit and that the tax proposal is being confirmed. Since the order is unreasoned, he submits that the order calls for interference. On instructions, he 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 the petitioner's reply is non speaking and does not assert that zero rated supplies made to the SEZ and that, consequently, apportionment as per Rules

42 and 43 is unnecessary.

4. In the affidavit in support of this writ petition, the petitioner has stated that supplies of the value of Rs.44,22,163/- were made to a SEZ. It is also stated that such supplies were inadvertently reported in table 3.1(c) of GSTR 3B instead of table 3.1(b) thereof. On examining the impugned order, after extracting the petitioner's reply, no reasons are set out therein for concluding that ITC is liable to be reversed. When the facts and circumstances are considered cumulatively, it is just and necessary that the matter be re-considered, albeit by putting the petitioner on terms for failure to effectively contest the tax demand when provided an opportunity earlier.

5. Therefore, impugned order dated 29.04.2024 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 an additional reply along with documents. Upon receipt thereof and on 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 ***three months*** from the date of receipt of the additional reply from the petitioner.

6. W.P.No.18003 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.19743 and 19746 of 2024 are closed.

29.07.2024

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

To

The Assistant Commissioner (ST),
Madipakkam Assessment Circle,
Room No.229, 2nd Floor,
Integrated Commercial Taxes Office Building,

Govt. Farm Village, Nandanam,
Chennai 600 035.

SENTHILKUMAR RAMAMOORTHY,J

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