IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17879 of 2024
and W.M.P.Nos.19616 & 19617 of 2024

M/s.Thulasi Pharmacies India Private Limited,
Rep. By its Managing Director,
Sri.M.Ramakrishnan,
No.225, 2nd Street,
Gandhipuram,
Coimbatore-641 012. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Gandhipuram Circle,
Coimbatore. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent in GSTIN:33AABCT687B1ZF/2018-19 and quash the proceeding dated 29/04/2024 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.C.Harsha Raj,
Additional Govt. Pleader (T)

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ORDER

An assessment order dated 29.04.2024 is assailed only insofar as it pertains to Defect Nos.2, 3, 4 and 8.

2. Upon receipt of show cause notice dated 09.01.2024, the petitioner submitted replies dated 08.02.2024, 15.03.2024, 24.04.2024 and 26.04.2024. The impugned order was issued thereafter on 29.04.2024.

3. Learned counsel for the petitioner submits that the challenge is limited to Defect Nos.2, 3, 4 & 8. As regards Defect No.2, which pertains to the mismatch between the petitioner's GSTR 3B returns and the auto-populated GSTR 2A, learned counsel submits that all the available certificates from suppliers were submitted at the time of adjudication. He submits that the assessing officer was unwilling to grant an extension of two weeks since the limitation period was expiring on 30.04.2024. He also submits that certificates from all other

suppliers have been obtained. In order to substantiate this contention, he relies upon the abstract at pages 207 & 208 of the typeset.

4. As regards Defect Nos.3 and 4, learned counsel submits that the confirmed tax proposal relates to the alleged sale of assets of the value of Rs.35,82,462/-. He points out that this value is the purchase value of the assets as reflected in the petitioner's financial statements. By adverting to the reply of the petitioner, learned counsel points out that assets of the value of Rs.18,28,805/- were transferred from the Bangalore Main Branch to the Lingarajapuram Branch, Bangalore, and assets of the value of Rs.13,62,774/- were transferred from the Erode Nadarmedu Branch to the Erode New Branch. He submits that the sale consideration on the actual sale of assets was only Rs.1,15,558/- and GST was paid on the same. As regards Defect No.8, he points out that the petitioner stated that GST was paid on the pilfered stock by treating the same as sales. He relies upon the communication dated 24.04.2024 and the certificate from the

Chartered Accountant enclosed with such reply. Without prejudice, on instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand in respect of Defect Nos.2, 4 and 8 as a condition for remand.

5. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. As regards Defect No.2, he points out that the petitioner submitted certificates from some but not all suppliers. To the extent certificates were provided, the liability was reduced. As regards Defect Nos.3 and 4, learned Additional Government Pleader submits that the petitioner did not submit documentary evidence to establish inter branch transfers to the extent indicated in paragraph 16.5 of the impugned order. With regard to pilferage, he contends that the petitioner failed to provide the relevant tax invoices in support of GST sales. He also submits that the prescribed procedure is for the taxpayer to reverse input tax credit to the extent of stolen/pilfered stock.

6. From the impugned order, as regards Defect No.2, it is evident that the taxpayer had requested for two weeks' time to submit the remaining certificates from suppliers. The petitioner has placed on record an abstract indicating the names of the remaining suppliers who have provided certificates. Learned counsel submits that such certificates are readily available for examination by this Court. In these circumstances, it is just and necessary to provide an opportunity to the petitioner albeit on terms.

7. As regards Defect Nos.3 and 4, the contention of the petitioner is that the total cost of acquisition of assets, as specified in the financial statement, was the basis for imposing liability, whereas it is stated that only the non-exempted sales [i.e. excluding inter branch transfers] should be reckoned. It appears that the contentions of the petitioner, in this regard, were not duly taken note of perhaps an account of the petitioner not submitting all relevant documents. As regards pilferage, the petitioner has placed on record the communication dated 24.04.2024 supported by auditor's

certificates. Needless to say, it would be necessary for the petitioner to provide other relevant documents, such as tax invoices. However, subject to putting the petitioner on terms, reconsideration is necessary with regard to the defects discussed above.

8. For reasons aforesaid, impugned order dated 29.04.2024 is set aside only insofar as Defect Nos.2, 3, 4 & 8 are concerned subject to the petitioner remitting 10% of the disputed tax demand in relation to these defects. Such remittance shall be made within fifteen days from the date of receipt of a copy of this order. The petitioner is permitted to submit any additional documents within the said period. Upon receipt thereof and on being satisfied that 10% of the disputed tax demand with regard to the above mentioned defects was remitted by the petitioner, 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 documents from the petitioner.

9. W.P.No.17879 of 2024 is disposed of on the above terms. Consequnetly, W.P.Nos.19616 & 19617 of 2024 are closed. No costs.

25.07.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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To

The Assistant Commissioner (ST),
Gandhipuram Circle,
Coimbatore.

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and W.M.P.Nos.19616 & 19617 of 2024

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