IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17867 of 2024
and W.M.P.Nos.19606 & 19607 of 2024

Tvl. Prem Distributors
Represented by its Proprietrix Rajesh Shanthilal
No.20/51, Ground Floor, Strahans Road,
Pattalam, Chennai 600 012. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Choolai Assessment Circle,
Palaniappa Maligai,
New No.10, Greams Road,
Chennai – 06. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent in GSTIN

/ 33AYKPS5376D1Z6 / 2017-18 dated 27.12.2023 along with Order and Summary of Order in Reference No. ZD331223224630 dated 27.12.2023 and quash the same and consequently direct the respondent to entertain the records, documents and reply from the petitioner and then pass order after affording a personal hearing to the petitioner.

For Petitioner : Ms.Rukmani Venugopalan

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

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ORDER

An order in original dated 27.12.2023 is challenged on the ground that the petitioner's reply was not considered and that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that the show cause notice and other communications were uploaded on the "view additional notices and orders" tab and not communicated to the petitioner through any other mode. Upon receipt of show cause notice dated 26.09.2023 alleging wrongful availment of Input Tax Credit, by reply dated 26.11.2023, the petitioner asserted that only eligible Input Tax Credit was claimed on the basis of supplies made to the petitioner. The petitioner also stated that the invoices are available and could be submitted for inspection. 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 petitioner's reply was referred to therein, but no findings were recorded as to why such reply was not accepted. She also points out that the first reminder was prior to the petitioner's reply. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader,

accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 26.09.2023 and two reminders dated 25.09.2023 and 23.12.2023. As regards the petitioner's reply, he submits that the petitioner did not annex supporting documents to establish entitlement to Input Tax Credit as per Section 16 of applicable GST statutes.

4. On examining the petitioner's reply, it appears that the petitioner asserts that eligible Input Tax Credit was availed of based on available invoices. However, it is noticeable that the petitioner did not annex documents necessary to establish that only eligible Input Tax Credit was availed of in terms of Section 16 of applicable GST statutes and Circular No.183. The impugned order refers to the reply of the petitioner and records that such reply is not acceptable without assigning reasons for such conclusion. In these circumstances, the interest of justice warrants that an opportunity be provided to the petitioner subject to putting the petitioner on terms.

5. For reasons aforesaid, the impugned order dated 27.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of ***fifteen days*** from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is permitted to submit an additional reply by enclosing supporting documents. 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 additional reply.

6. W.P.No.17867 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.19606 and 19607 of 2024 are closed.

24.07.2024

rna
Index : Yes / No

Internet : Yes / No
Neutral Citation: Yes / No

SENTHILKUMAR RAMAMOORTHY,J

rna

To

The Assistant Commissioner (ST),
Choolai Assessment Circle,
Palaniappa Maligai,
New No.10, Greams Road,
Chennai – 06.

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