IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18109 of 2024
and W.M.P.Nos.19898, 19900 & 19913 of 2024

Aditya Constructions,
Represented by its Partner Mrs.Padmavathi R.,
No.7, 2nd Floor, Chengalvarayan Street,
Aminjikariai, Chennai 600 030. ... Petitioner

-vs-

1. The Assistant Commissioner,
Amaindakarai Assessment Circle,
Central – II, Chennai, Station No: F-50,
First Avenue, Anna Nagar (East),
Chennai 600 102.

2. The State Tax Officer,
Amaindakarai Assessment Circle,
F-50 First Avenue, Anna Nagar (East),
Chennai 600 102.

3.The Assistant Commissioner (ST),
J J Nagar Assessment Circle,
Now at: Integrated Commercial Taxes Building,
Nandanam, Chennai 600 035.

4. The Branch Manager,
State Bank of Travancore,
No.W-7, North Main Road,
Anna nagar West Extension,
Chennai 600 101. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records in Reference Number ZD331223285143Q/2017-18 dt 30.12.2023 on the file of the 1st respondent and quash the same as contrary to law, consequently direct the 1st Respondent to defreeze the bank account namely current Account number 67224327888 and all related accounts to the PAN: PAN AHVPV9527H and AXVPP0301M in DRC-13 bearing GSTIN 33AANFA5066H1ZG dated. 09.05.2024 of the Petitioner-Registered Taxable Person.

For Petitioner : Mr.S.Ramanan

For R1 to R3 : Mr.G.Nanmaran, Special Govt. Pleader

ORDER

An order in original dated 30.12.2023 is challenged on the ground that the petitioner's replies were not taken into consideration. The petitioner received notice dated 05.03.2019 from the 3rd respondent. By such notice, the petitioner was called upon to show cause in respect of the wrongful availment of Input Tax Credit (ITC) to the extent of Rs.10,81,903/-. The petitioner replied to such notice on 18.03.2021. Being dissatisfied with such reply, show cause notice dated 28.09.2023 was issued to the petitioner in respect of two issues; the first issue related to availment of transitional credit in respect of TDS under the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT Act) regime and the second issue related to denial of ITC for purchases made from cancelled dealers under the TNVAT Act. The petitioner replied on 26.12.2023 as regards ITC relating to TDS. The second issue was not replied to. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner submits that the replies of the petitioner were disregarded in the impugned oder. He also submits that the

issue relating to availment of transitional ITC in respect of TDS was decided in favour of the tax payer in *DMR Constructions v. The Assistant Commissioner, Commercial Tax Department (W.P.Nos.9991/2020 etc.,), order dated 26.02.2021*. As regards the denial of ITC to the extent of Rs.1,54,172/-, he submits that the petitioner agrees to pay 10% of the said amount as a condition for remand.

3. Mr.G.Nanmaran, learned Special Government Pleader, appears on behalf of respondents 1 to 3. After obtaining instructions, he confirms that the petitioner's replies were received.

4. On perusal of the impugned order, it is noticeable that it is recorded therein that the tax payer did not file objections to the show cause notice. The petitioner has placed on record reply dated 19.03.2019 and reply dated 26.12.2023. The reply dated 26.12.2023 was also uploaded on 27.12.2023. Documents in support of the reply were also annexed. In these circumstances, the impugned order cannot be sustained as regards the issue relating to TDS. Even as regards the other issue, the tax proposal was

confirmed because the petitioner had not responded on such issue. Subject to putting the petitioner on terms in respect thereof, reconsideration is necessary.

5. For reasons aforesaid, the impugned order dated 30.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand relating to the denial of ITC in respect of cancelled dealers as agreed to. Such remittance shall be made within a period of two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply in respect of the said issue. In order to enable the petitioner to file such reply, the respondents 1 to 3 are directed to provide details of relevant cancelled dealers within two weeks from the date of receipt of a copy of this order. The petitioner's reply shall be filed within two weeks thereafter. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand of Rs.1,54,172/- was remitted by the petitioner, the 3rd 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. In

view of the assessment order being set aside, the bank attachment is raised.

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

24.07.2024

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

kj

To

1. The Assistant Commissioner,
Amaindakarai Assessment Circle,
Central – II, Chennai, Station No: F-50,
First Avenue, Anna Nagar (East),
Chennai 600 102.

2. The State Tax Officer,
Amaindakarai Assessment Circle,
F-50 First Avenue, Anna Nagar (East),
Chennai 600 102.

3.The Assistant Commissioner (ST),
J J Nagar Assessment Circle,

Now at: Integrated Commercial Taxes Building,
Nandanam, Chennai 600 035.

SENTHILKUMAR RAMAMOORTHY,J

kj

W.P.No.18109 of 2024
and W.M.P.Nos.19898, 19900 & 19913 of 2024

24.07.2024