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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.17912 of 2024**
**and W.M.P.Nos.19650 & 19651 of 2024**

BK & K Chemicals Private Limited,
Rep by its Director Mr.G.Bhaskar,
11, 12 Sri Vijayalakshmi Nagar, Kuzhangacheri Village,
Kundrathur Panchayat,
Sriperumbudur Taluk,
Kancheepuram 602 105. ... Petitioner

-vs-

1.The Assistant Commissioner (ST),
Oragadam: Kancheepuram
Integrated Commercial Tax Buildings,
No.4/109, Chennai Bangalore Highways,
Nazarathpet, Chennai 600 123.

2.The State Tax Officer,
(Formerly Known as Commercial Tax Officer)
Oragadam Assessment Circle,
Integrated Commercial Tax Buildings,
No.4/109, Chennai Bangalore Highways,
Nazarathpet, Chennai 600 123. ... Respondents



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**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 29.12.2023 for the financial year 2017-18 in Reference No. ZD331223259313R/2017-18 passed by the 2nd respondent and the consequential rejection order dated 27.05.2024 bearing Reference No: ZD330524249240R/2017-18 passed by the 1st respondent, in so far as prayers No.5 & 6 in application for rectification dated 26.03.2024 is concerned, and quash the same as arbitrary, illegal.

For Petitioner : Mrs.V.Vijayalakshmi

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

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**ORDER**

Both an order in original dated 29.12.2023 and an order rejecting a rectification application are challenged in this writ petition. Upon receipt of show cause notice dated 27.09.2023, the



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petitioner replied on 20.12.2023. The order in original was issued in these facts and circumstances. By such order, the petitioner's explanation was accepted with regard to five defects, whereas the tax proposals were confirmed in respect of defect nos.5 and 6. The rectification application was submitted thereafter by enclosing additional documents. Such rectification application was rejected by order dated 27.05.2024.

2. Learned counsel for the petitioner referred to the reply to the show cause notice and pointed out that the petitioner had submitted photocopies of invoices and the statement of supply to the SEZ to establish that the said supplies were zero rated. As regards defect no.6, she submitted that the petitioner had attached copies of the relevant credit notes and related invoices. She contends that these tax proposals were confirmed without providing a personal hearing. As regards the rectification application, she contends that sufficient documents were annexed along with application dated 21.03.2024 by



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uploading the same on 26.03.2024. She points out that the order rejecting the rectification application refers to an annexure, but an annexure was not annexed to such order. In effect, she submits that the rectification order was completely unreasoned.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He points out that the petitioner's reply was duly considered and, consequently, five out of the seven tax proposals were withdrawn / dropped. As regards defect nos.5 and 6, he submits that the order sets out cogent reasons for rejecting the tax payer's reply. Hence, he contends that no interference is warranted. As regards the rectification application, learned Additional Government Pleader contends that such application would be liable to be allowed only if there are errors apparent on the face of the record. Since such errors are not discernible from the order in original, he submits that there is no infirmity in the order of rejection.



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4. On perusal of the impugned order, it is evident that the tax payer's reply and the documents annexed thereto were considered in respect of each defect dealt with therein. Upon such consideration, tax proposals relating to five defects were withdrawn / dropped. As regards defect no.5, it is recorded that the tax payer produced invoice copies and the purchase register. It is also recorded that the tax payer failed to submit the MEPZ certificate, agreement copy, LUT copy, purchase order, BRC statement, etc. Thus, clear reasons were specified for rejecting the claim. As regards defect no.6, the order records that the tax payer had produced copies of the credit notes. The tax proposal was confirmed on account of non provision of proof of reversal of Input Tax Credit. Once again, the reasoning cannot be faulted.

5. The petitioner subsequently filed rectification application dated 21.03.2024 and attached the purchase order and MEPZ



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certificate. Likewise, as regards defect no.6, the petitioner has provided details of credit notes and the availment of Input Tax Credit so as to establish that only net ITC was availed of. These additional documents and information would not justify rectification of the order in original given the limited scope of Section 161 of applicable GST enactments. Nonetheless, in order to provide another opportunity to the petitioner to respond effectively to defect nos.5 and 6 in view of the additional documents, re-consideration is necessary in the interest of justice, albeit by putting the petitioner on terms. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 20% of the disputed tax demand as regards defect nos.5 and 6.

6. Therefore, impugned order in original dated 29.12.2023 is set aside only insofar as defect nos.5 and 6 are concerned subject to the condition that the petitioner remits 20% of the disputed tax demand in respect of the said defects as agreed to within ***fifteen days*** from the



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date of receipt of a copy of this order. The petitioner is also permitted to re-submit all relevant documents within said period. Upon receipt thereof and on being satisfied that 20% of the disputed tax demand as regards defect nos.5 and 6 were 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 petitioner's reply.

7. W.P.No.17912 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.19650 and 19651 of 2024 are also closed.

**25.07.2024**

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



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**To**

1.The Assistant Commissioner (ST),
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2.The State Tax Officer,
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**SENTHILKUMAR RAMAMOORTHY,J**

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