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W.P.No.18158 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

**W.P.No.18158 of 2024**  
**and W.M.P.Nos.19942 & 19943 of 2024**

Tvl. International Construction Co.,  
Represented by its Partner  
Mr.Firoz Fakhrudin Karimi,  
Earlier had their office at Block 102,  
Plot no. 40A, Manali New Town,  
Chennai 600 103.  
Having their Head Office at Ground Floor,  
Vijaya Bhavan, Prabhat Colony,  
Road No.7, Santacruz E,  
Mumbai Suburban,  
Maharashtra – 400 055.

... Petitioner

-VS-

1. The Assistant Commissioner (ST),  
Cholavaram Assessment Circle,  
Room No.109, 1st Floor,  
Integrated Commercial taxes Building,  
Elephant Gate, Wall Tax Road,  
Vepery, Chennai-600 003.



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2. The Assistant Commissioner (ST),  
Mannady Assessment Circle,  
Room no. 204, 1st Floor,  
Integrated Commercial Taxes Building,  
Elephant Gate, Wall Tax Road,  
Vepery, Chennai – 600 003.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the impugned proceedings of the first respondent passed in GSTIN: 33AABFI0530L1ZS/2018-2019 dated 16.04.2024 and the connected order under Section 73 dated 17.4.2023 and the summary of the order in Form GST DRC-07 dated 17.04.2024 both issued in Reference No. ZD330424128346L and quash the impugned proceedings as passed contrary to the provisions of the Central Goods and Service Tax Act, 2017 read with the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and also passed in contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.C.Harsharaj, AGP (T)

### **ORDER**



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An order in original dated 16.04.2024 is challenged in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that the business is carried on in multiple States such as Maharashtra, Andhra Pradesh, Gujarat, Odisha, Chhattisgarh and Tamil Nadu. During the relevant period 2018-2019, it is stated that the petitioner did not effect substantial taxable supplies in Tamil Nadu. Consequently, it is stated that the petitioner did not monitor the GST portal and, therefore, failed to reply to the show cause notice. The impugned order dated 16.04.2024 was issued in these facts and circumstances.

2. Learned counsel for the petitioner referred to the show cause notice and contended that the tax demand in the show cause notice is confined to two issues, namely, the mismatch between the petitioner's GSTR 3B returns and the GSTR 1 return as also the difference between the GSTR 3B returns and the auto-populated GSTR 2A. With regard to the first issue, he submits that the tax proposal was for a sum of about Rs.6.60 lakhs and as regards the second issue, the tax proposal was for a sum of Rs.4,62,546/-. By contrast,



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by referring to the impugned order, learned counsel submits that multiple tax proposals were confirmed for an aggregate sum of Rs.6,65,76,994/-. By referring to Section 73 of applicable GST enactments, learned counsel contends that it was obligatory on the part of the respondent to indicate the proposed tax liability in respect of each head dealt with in the show cause notice.

3. Without prejudice to this contention, learned counsel pointed out that the balance tax demand in the impugned order pertains to the disparity between the turnover as reported in the petitioner's returns in comparison with the profit and loss statement. He pointed out that the turnover reported in the petitioner's returns pertain to the State of Tamil Nadu. Such turnover was Rs.11,78,63,417/-, whereas the All India turnover was reported in the profit and loss account at Rs.43,95,66,187/-. He submits that a grave error was committed by taxing the total difference of Rs.32,17,02,770/-. He has placed on record a certificate issued by Sanjay C. Shah & Associates, Chartered Accountants, dated 30.07.2024, to establish the above contention that the Tamil Nadu turnover was reported fully in the petitioner's returns.



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He further contends that the other tax proposals such as current liabilities, other income, administrative expenses were also based on the All India data contained in the petitioner's financial statement. In these circumstances, he seeks a remand and submits, on instructions, that the petitioner agrees to remit 10% of the disputed tax demand in respect of all demands except discrepancy no.3.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, appears on behalf of the respondents. He submits that proceedings were initiated against the petitioner pursuant to scrutiny of returns by issuing ASMT 10 notice dated 28.12.2023. The petitioner did not reply thereto. An audit was also conducted and audit report dated 28.12.2023 was issued. This was followed by show cause notice dated 28.12.2023 and at least two reminders in respect of a personal hearing. Therefore, he submits that principles of natural justice were complied with and that the petitioner failed to respond to any of the above mentioned communications. In those circumstances, he contends that the respondents were constrained to confirm all tax proposals.



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5. On perusal of the show cause notice, it appears that all the heads of claim were dealt with therein, but quantification was done only in respect of two discrepancies (discrepancy nos. 1 & 2). The impugned order discloses that discrepancy nos.3, 6, 7 and 11 were based on a comparison of the profit and loss account and the petitioner's GSTR returns. As regards discrepancy no.3, a comparison was made between the turnover reported in the GSTR returns of Rs.11,78,34,420/- and that disclosed in the profit and loss account of Rs.43,95,66,187/-. The profit and loss account appears *prima facie* to have been prepared on All India basis. While the petitioner failed to provide a trial balance in respect of Tamil Nadu or an auditor's certificate, an auditor's certificate was placed for consideration before this Court. In such certificate, as regards discrepancy no.3, the auditor has certified that the Tamil Nadu turnover during the relevant year was Rs.11,78,34,420/-, which includes local sales and stock transfer. In these circumstances, it appears *prima facie* that the imposition of GST on the entire differential turnover does not appear tenable. However, these aspects are required to be verified by the assessing officer on closely examining all relevant documents. The other discrepancies based on the difference between the GSTR returns and



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the financial statements may also require reconsideration since the financial statements appear to be *prima facie* prepared on All India basis. Since the petitioner failed to participate in proceedings in spite of being provided several opportunities, it is just and necessary to put the petitioner on terms.

6. For reasons aforesaid, impugned order dated 16.04.2024 is set aside on condition that the petitioner remits 10% of the disputed tax demand as regards discrepancy nos. 1, 2, 6, 7 and 11 as agreed to within a period of three weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice, including the quantification made in the impugned order, within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was remitted as indicated herein, the 1<sup>st</sup> 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.

7. The writ petition is disposed of on the above terms without any



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order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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**SENTHILKUMAR RAMAMOORTHY,J**

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