IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18911 of 2024
and W.M.P.Nos.20768 & 20770 of 2024

Tvl. Western Medical Marketing,
Represented by its Managing Partner Sri KK.Selvam
61/26, II Agraharam,
Salem-636 001. ... Petitioner

-vs-

Deputy Commercial Tax Officer-I,
Salem Bazzar Assessment Circle,
Salem. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in impugned order in GSTIN/33AAAFW626B1ZG/2017-18 dated 31.12.2023, and quash the same.

For Petitioner : Mr.N.Chandirasekar

For Respondent : Mr.G.Nanmaran, Spl. Govt. Pleader(T)

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ORDER

An order in original dated 31.12.2023 is assailed on the ground that the tax proposal was confirmed on the basis of the audit report without independent application of mind.

2. An audit was conducted in respect of the petitioner. Pursuant thereto, audit observations were issued. The petitioner responded thereto. This was followed by show cause notice dated 30.09.2023. The petitioner replied to such show cause notice on 21.12.2023. The order impugned herein was issued in such circumstances on 31.12.2024.

3. Learned counsel for the petitioner contends that the assessing officer was under an obligation to examine the tax proposals independently and not confirm the same on the basis of the audit report. By referring to the petitioner's reply to the show cause notice, wherein the petitioner stated that the mismatch between the returns of the petitioner were rectified in the reconciliation statement, learned

counsel contends that the reconciliation statement was disregarded while issuing the impugned order. As regards Defect No.2, he submits that the petitioner had obtained and submitted a certificate from the supplier in conformity with circular No.183, but the same was disregarded. As regards the alleged failure to furnish debit notes, he submits that the source of information regarding such debit notes was not disclosed. He also points out that no debit notes were issued. In these circumstances, learned counsel submits that reconsideration is necessary. On instructions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as regards Defect Nos.2, 4 and 5.

4. Mr.Nanmaran, learned Special Government Pleader, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 30.09.2023 and by offering a personal hearing to the petitioner. He also submits that the petitioner's reply was duly considered and even extracted in the impugned order.

5. In the reply dated 14.11.2023, the petitioner has referred to a reconciliation statement in GSTR 9C and contended that the mismatch was adequately dealt with and rectified therein. Although there is a reference to the reconciliation statement in the impugned order, it is merely recorded that the taxpayer's replies were verified and is not acceptable. Since such conclusion is completely unreasoned, interference is necessary.

6. As regards the wrong availment of input tax credit, the petitioner had submitted a certificate from INTAS Pharmaceuticals Limited. The petitioner's reply was referred to, but the tax proposal was confirmed by recording that the taxpayer had not filed the invoice copies and proof of payment made towards supply. With regard to the failure to furnish debit and credit notes, after referring to the reply, it was recorded that the taxpayer had not submitted relevant documents, including the documents to prove movement of goods.

7. Thus, as regards Defect No.1, the order is completely unreasoned. As regards the other defects, while reasons are recorded, it does not appear that the material placed on record by the petitioner has been duly considered. In these circumstances, albeit by putting the petitioner on terms, a remand is necessary.

8. For reasons set out above, subject to the petitioner remitting 10% of the disputed tax demand with regard to Defect Nos.2, 4 and 5 as agreed to, the impugned order is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit additional documents within *fifteen days* from the date of receipt of a copy of this order. Upon receipt thereof, 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.18911 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.20768 & 20770 of 2024 are closed.

23.07.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

The Deputy Commercial Tax Officer-I,
Salem Bazzar Assessment Circle,
Salem.

SENTHILKUMAR RAMAMOORTHY,J

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