IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.12.2024**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.37263 of 2024
and W.M.P.Nos.40283, 40285 & 40286 of 2024

VTL Global Supply Chain Solutions Private Limited,
Rep. by its Director Mr.Rajesh Kumar,
No.58/39, 4th Floor, Annex 1,
Wavoo Mansion, Rajaji Salai,
Parrys, Chennai, Tamil Nadu – 600 001.
(Now at C4, Third Floor,
New No.130, Old No.266,
Thambu Chetty Street, JSJ Complex,
Parrys, Chennai – 600 001. ... Petitioner

Vs.

1.Assistant Commissioner (ST),
Mannady Assessment Circle,
North-II : Chennai North : Tamil Nadu,
Integrated Commercial Taxes Building,
No.32, Elephant Gate, Bridge Road,
Chennai – 600 003.

2.Deputy Commissioner (CT),
O/o the Deputy Commissioner (ST),
GST Appeal Chennai – I,
PAPJM Building,
Greams Road, Chennai – 600 006.

3.Assistant Commissioner (ST),
Muthialpet Assessment Circle,
Integrated Commercial Taxes Building,

No.32, Elephant Gate Bridge Road,
Chennai – 600 003. … Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records in the file of the respondents and quash the impugned order under Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 including the Summary of the Order in Form GST DRC-07 both dated 25.10.2023 and having Reference Number ZD3310231452514 and its annexure dated 25.10.2023 in GSTIN:33AADCV9952A1ZE/2017-2018 passed by the First Respondent for FY 2017-18 along with the acknowledgments in Form GST APL 02 dated 23.10.2024 issued by the Second Respondent under Rule 108 of Central Goods and Services Tax Rules, 2017/ Tamil Nadu Goods and Services Tax Rules, 2017 for the FY 2017-18 18 having Reference Nos.ZD331024162832P and ZD331024162806K.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader (Tax)

ORDER

This writ petition has been filed challenging the impugned order under Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 including the Summary of the Order in

Form GST DRC-07 both dated 25.10.2023 and having Reference Number ZD3310231452514 and its annexure dated 25.10.2023 in GSTIN:33AADCV9952A1ZE/2017-2018 passed by the First Respondent for FY 2017-18 along with the acknowledgments in Form GST APL 02 dated 23.10.2024 issued by the Second Respondent under Rule 108 of Central Goods and Services Tax Rules, 2017/ Tamil Nadu Goods and Services Tax Rules, 2017 for the FY 2017-18 18 having Reference Nos.ZD331024162832P and ZD331024162806K.

2. The Petitioner is a private limited company and has its principal place of business in the State of Tamil Nadu and is registered under the Central Goods and ServiceTax Act, 2017 [CGST Act] and the Tamil Nadu Goods and Services Tax Act, 2017 [INGST Act] together called the GST Acts vide GSTIN:33AADCV9952AIZE. The First Respondent issued a notice for intimating discrepancies after scrutiny of returns filed under GST Acts, in Form ASMT-10 having Reference No.ZD3305230121624 dated 04.05.2023 for financial year 2017-18 alleging Non- Reversal Input Tax Credit [ITC] on account of Credit Notes issued by the Petitioner's suppliers, which is reflecting in Form GSTR-2A.

2.1. The Petitioner filed response to the said notice in Form GST ASMT-11 on 03.06.2023 vide ARN ZD3306230085581 stating that ITC was availed after adjusting credit notes only. Hence no reversal of ITC is warranted. The First Respondent issued a Summary of Show Cause Notice in Form DRC-01 under section 73 of GST Act having Reference No.ZD3309230592131 dated 11.09.2023 for Financial Year 2017-18 and then proposed to demand Rs. 60,97,044/- (Rs. 30,39,936/- CGST and Rs. 30,57,108/-TNGST) including interest and penalty. The Petitioner submits that only one personal hearing was fixed and that too prior to the due date of furnishing any response to the SCN and no other opportunity of personal hearing was granted to the Petitioner. The First Respondent passed an order under section 73 along with a Summary of the order in Form GST DRC-07 dated 25.10.2023 both having Reference No.ZD3310231452514 along with an annexure having Reference No. GSTIN:33AADCV9952A1ZE/2017- 2018 wherein a demand of Rs. 60,97,044/- (CGST Rs. 30,39,936/- and SGST Rs. 30,39,936/-) including interest and penalty was confirmed on account of non-reversal of ITC relating to credit notes raised by the Petitioner's suppliers.

3. The impugned orders are challenged on the premise that neither the show cause notices nor the impugned order of assessment have been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal. It was further submitted that the petitioner was unable to access the common portal and thus was unable to participate in the adjudication proceedings. It was further submitted that the petitioner has filed an appeal and the same was rejected by the second respondent on the ground of delay in filing the appeal.

4. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies. The learned counsel for the petitioner would then place reliance upon the recent judgment of this Court in the case of ***M/s.Balakrishnan, Balu Cables vs. O/o. The Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024.*** It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal. It is further submitted that subsequent to the passing of the impugned orders, the

petitioner has remitted amounts in excess of the admitted tax and his only request is that the same may be adjusted towards 25% of the disputed tax. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Additional Government Pleader appearing for the respondents does not have any serious objection.

5. Since, the above order is made on the basis of the statement made by the learned counsel for the petitioner that 10% of the disputed tax has been remitted already, the respondents may verify the same. If the statement made by the learned counsel for the petitioner regarding the payment of 10% of disputed taxes is incorrect, the respondents authority shall intimate the same to the petitioner who shall deposit 25% of disputed taxes within 4 weeks from the date of such intimation. Subject to verification of payment of the entire disputed taxes or on payment of 25% of disputed taxes, attachments if any, would be lifted.

6. In view thereof, the impugned orders are set aside and the petitioner shall deposit 25% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. The respondents authority shall take

into account the amount remitted by the petitioner in excess of the admitted tax, while reckoning 25% of the disputed tax. On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondents and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and back accounts have been attached. In view of the order passed herein, the bank attachment shall be lifted forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of two weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are

closed.

06.12.2024 (vm)

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

Note: Issue order copy on 09.12.2024

J.SATHYA NARAYANA PRASAD,J.

vm

To:

1.Assistant Commissioner (ST),
Mannady Assessment Circle,
North-II : Chennai North : Tamil Nadu,
Integrated Commercial Taxes Building,
No.32, Elephant Gate, Bridge Road,
Chennai – 600 003.

2.Deputy Commissioner (CT),
O/o the Deputy Commissioner (ST),
GST Appeal Chennai – I,
PAPJM Building,
Greams Road, Chennai – 600 006.

3.Assistant Commissioner (ST),
Muthialpet Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,

Chennai – 600 003.

W.P.No.37263 of 2024

06.12.2024