IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.9001 of 2024

M/s.Richards & John Wesley Engineers Pvt Ltd.,
Represented by its
Chief Executive Mr.T.Vijayakumar,
No.136/400, 39th Street, TVS Avenue,
Anna Nagar, West Extension,
Chennai 600 101. ... Petitioner

-vs-

1.The Principal Chief Commissioner of GST & C.EX,
26/1 Uttamar Gandhi Salai, Nungambakkam,
Chennai 600 034.

2.The Principal Commissioner of GST & C.EX.
Chennai GST North Commissionerate,
26/1, Uttamar Gandhi Salai, Nungambakkam,
Chennai 600 034.

3.The Commissioner of GST & C.EX,
Audit-1 Commissionerate,
1775 Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extn,
Chennai 600 040.

4.The Additional Commissioner of GST & C.EX,

O/o. The Commissioner of GST & C.EX,
Audit-1 Commissionerate,
1775 Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extn, Chennai 600 040.

5.The Additional Commissioner of GST & C.EX.
O/o. The Principal Commissioner of GST & C.EX.
26/1, Uttamar Gandhi Salai, Nungambakkam,
Chennai 600 034.

6.The Assistant Commissioner of GST & C.EX., Circle-II,
O/o. The Commissioner of GST & C.EX,
Audit-1 Commissionerate,
1775 Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extn, Chennai 600 040.

7.The Superintendent of GST & C.EX., Group-5, Circle-II,
O/o. The Commissioner of GST & C.EX,
Audit-1 Commissionerate,
1775 Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extn, Chennai 600 040. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the impugned order (Order in Original No.216/2023 CH.N (ADC)(GST) dated 28.12.2023 passed by the fifth respondent quash the same as illegal and arbitrary.

For Petitioner : Mr.A.Dhamodaran

For Respondents : Mr.B.Ramanakumar, Sr. SC

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ORDER

An assessment order dated 28.12.2023 is the subject of challenge in this writ petition. The petitioner is engaged in the wholesale trade and distribution of electrical goods. Pursuant to an audit, the audit report dated 09.12.2022 was issued. The petitioner raised objections in relation thereto. Thereafter, a show cause notice dated 11.09.2023 was issued to the petitioner. Such show cause notice was replied to on 17.10.2023. Pursuant to a personal hearing on 20.10.2023, the impugned order was issued on 28.12.2023.

2. Learned counsel for the petitioner contends that the impugned order is vitiated by the failure of the respondents to provide audit observations pursuant to the audit. As a consequence, he contends that the petitioner was deprived of the opportunity to respond to the audit observations before the audit report was prepared. He also submits that the audit report does not contain the document identification number. Learned counsel further contends

that the reply of the petitioner and the documents annexed in support of such reply were not duly taken into consideration while confirming the demand with regard to non payment of GST on the sale of fixed assets and wrong availment of Input Tax Credit.

3. Mr.B.Ramanakumar, learned senior standing counsel, accepts notice for the respondents. He submits that the petitioner did not raise objections to the audit report and instead participated in proceedings culminating in the impugned order. At this point of time, he contends that it is not open to the petitioner to raise objection with regard to the audit, including in relation to the absence of the document identification number thereon. He further submits that the impugned order was issued on 28.12.2023 and that the petitioner failed to avail of the statutory remedy available against such order.

4. On perusal of the documents on record, it is evident that the petitioner was put on notice before the audit and submitted various documents in response to such notice. The petitioner also responded

to the audit report and to the show cause notice. The impugned order discloses that a personal hearing was provided to the petitioner on 20.10.2023. In these circumstances, it is clear that principles of natural justice were complied with in substance. It is further evident from the impugned order that six issues were taken up for consideration. Out of the six issues, upon consideration of the petitioner's reply, the tax proposal in respect of four issues were dropped. As regards the remaining issues, upon appraisal of evidence, the tax proposals were confirmed. As pointed out by learned senior standing counsel, the petitioner has an appellate remedy against this order.

5. In the facts and circumstances outlined above, I am not inclined to exercise discretionary jurisdiction. However, it should be noticed that this writ petition was filed on 29.02.2024, which was within the original period of limitation. As of today, the petitioner is within the condonable period. Therefore, it is just and appropriate

that the petitioner be permitted to present the statutory appeal.

6. Therefore, W.P.No.9001 of 2024 is disposed of by permitting the petitioner to present a statutory appeal before the appellate authority. If such appeal is presented within ***ten days*** from the date of receipt of a copy of this order, the appellate authority is directed to receive and dispose of the same on merits without going into the question of limitation. No costs.

04.04.2024

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

To

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SENTHILKUMAR RAMAMOORTHY,J

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