



WEB COPY



W.P.No.2764 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.2764 of 2023
and
W.M.P. Nos.2874 and 2875 of 2023

Thirumangai Ramachandiran

.. Petitioner

VS

The State Tax Officer (Circle),
Villupuram – I,
Villupuram.

... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the respondent in reference Number : ZD330622009082Z, dated 16.06.2022 and quash the same.

For Petitioner : Mr.S.Ramanan

For Respondent : Mr.M.Venkateswaran,
Special Government Pleader

ORDER

By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr.M.Venkateswaran, learned Special Government Pleader accepts notice for the respondent.



W.P.No.2764 of 2023

3. This writ petition has been filed challenging the impugned Assessment Order, dated 16.06.2022 passed under the Tamil Nadu Goods and Services Tax Act, 2017.

4. The petitioner has challenged the impugned Assessment Order on the ground of violation of principles of natural justice. According to him, only due to his medical ailments, he did not respond to the show cause notice issued by the respondent. The said show cause notice was issued on 15.12.2021. The petitioner has produced medical certificates issued by his Doctor dated 26.11.2021, 19.02.2022 and 20.04.2022, disclosing that he is suffering from diabetes / Coronary Artery disease and acute chest pain and he was also advised to take cardiac medicines for the next three months as seen from the medical certificates.

5. Heard Mr.S.Ramanan, learned counsel for the petitioner, and Mr.M.Venkateswaran, learned Special Government Pleader for the respondent.

6. Admittedly, the show cause notice was issued only during the time when the petitioner was suffering from health ailments. The petitioner did not respond to the show cause notice dated 15.12.2021. He also categorically contends that only due to his medical ailments, he was unable to send a reply to the show cause notice. The petitioner also



W.P.No.2764 of 2023

contends that in the impugned Assessment Order, the respondent has erroneously come to the conclusion that there is an input tax mismatch and excess input tax claim without verifying the documents as per the provisions of Section 16 of the TNGST Act, 2017. The petitioner has also filed a copy of the Annual Return filed by him in GSTR – 9 filed for the year 2018-19.

7. As seen from the Annual Return for the year 2018-19, the input tax credit has been reversed by the petitioner himself and therefore according to the petitioner, by total non application of mind to the Annual Return submitted by the petitioner for the year 2018-19, the impugned Assessment Order has been passed by the respondent. The petitioner also contends that no personal hearing was afforded to the petitioner before passing of the impugned Assessment Order. The impugned Assessment Order also does not disclose that a personal hearing was afforded to the petitioner.

8. The learned counsel for the petitioner also relies upon a recent Circular of the Commercial Taxes Department, Government of Tamil Nadu, in Circular No.1/2023-TNGST, dated 04.01.2023 and would



W.P.No.2764 of 2023

submit that the following documents will have to be scrutinised by the Assessing Officer before passing the Assessment Order.

9. Clause 4 of the aforementioned Circular reads as follows :-

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of TNGST Act in respect of the input tax credit availed on such invoices by the said registered person :

i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) that he has received the goods or services or both;

iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of TNGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section(4) of section 16 of TNGST Act.

10. As seen from the impugned Assessment Order, it is not clear as to whether the above mentioned Clause in the Circular was adhered to by the respondent before passing the impugned Assessment Order. Even



W.P.No.2764 of 2023

though the Circular referred to supra came in later point of time, the instructions given in the said Circular ought to have been adhered to by the respondent before passing the impugned Assessment Order and only then, it can be construed that the respondent has adhered to the principles of natural justice.

11. For the foregoing reasons, this Court is of the considered view that the principles of natural justice has not been adhered to by the respondent and the impugned Assessment Order is also a non speaking order with regard to the Annual Return submitted by the petitioner for the Assessment year 2018-19. Hence, the impugned Assessment Order has to be quashed and the matter will have to be remanded back to the respondent for fresh consideration on merits and in accordance with law. Accordingly, the same is quashed and remanded back to the respondent for fresh consideration on merits and in accordance with law. The respondent shall pass final orders, within a period of twelve weeks from the date of receipt of a copy of this order, after affording a personal hearing to the petitioner and by adhering to the principles of natural justice and by strictly adhering to the instructions given by the Commercial Taxes Department in its Circular No.1/2023-TNGST, dated



W.P.No.2764 of 2023

04.01.2023.

WEB COPY 12. With the aforesaid directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

03.02.2023

Index:Yes/No

Neutral Citation:Yes/No

vsi2

To
The State Tax Officer (Circle),
Villupuram – I,
Villupuram.



WEB COPY



W.P.No.2764 of 2023

ABDUL QUDDHOSE, J.

vsi2

W.P. No.2764 of 2023

03.02.2023