



WEB COPY



W.P.No.4121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.4121 of 2023
and
W.M.P.No.4178 of 2023

Sendhil Kumar

... Petitioner

Vs.

The State Tax Officer,
Tiruvallur Assessment Circle,
No.4/109, GST Building,
Chennai Bangalore High Way,
Chennai - 600123.

... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, call for the impugned proceedings of the respondent passed in GSTIN:33CZZPS5829R1ZW/2021-22 dated 28.12.2022 and quash the same as the impugned proceedings of the respondent is in violation of principles of natural justice, dis-regard to the provisions of the TNGST Act / Rules 2017 and further direct the respondent to re-do the adjudication in accordance with law.



For Petitioner : Mr.N.Murali
For Respondent : Ms.Amirtha Dinakaran
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned assessment order dated 28.12.2022 for the assessment year 2021-2022 on the ground that no personal hearing was afforded to the petitioner in the impugned assessment proceedings.

2. In the impugned assessment order, the tax liability of the petitioner has been determined under the CGST and SGST at Rs.4,44,292/- and a penalty of Rs.4,44,292/- has been imposed, totalling a sum of Rs.8,88,584/-.

3. The petitioner contends that as per Section 75 (4) of the GST Act, 2017, personal hearing ought to have been afforded to the petitioner since an adverse decision has been taken by the respondent under the impugned assessment order. Section 75 (4) of the GST Act reads as follows:

*"(4) An opportunity of hearing shall be granted
where a request is received in writing from the person*



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chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

4. As seen from Section 75 (4) of the Act, whenever the respondent contemplates any adverse decision against the assessee, whether a request is received from the assessee for hearing or not, the respondent will have to grant personal hearing to the assessee, the petitioner herein.

5. Section 75(4) of the GST Act, 2017 was also interpreted by two Honourable Judges of this Court in their respective decisions. One dated 08.03.2021 passed in W.P.Nos.2049 and 2050 of 2021 and the other dated 06.09.2021 passed in W.P.No.18582 of 2021. In both the aforesaid decisions, the learned Judges of this Court have concurrently upheld that a right of personal hearing to the assessee is mandatory whenever the respondent contemplates any adverse decision in the assessment proceedings.

6. This Court is in agreement with the view taken by the learned Judges of this Court in the aforesaid decisions.



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7. Admittedly, no personal hearing was afforded to the petitioner in the impugned assessment proceedings as seen from the impugned assessment order. An adverse decision has also been taken by the respondent against the petitioner in the impugned assessment order. Therefore, necessarily the impugned assessment order has to be quashed on the ground of violation of the principles of natural justice as no personal hearing has been granted to the petitioner as contemplated under Section 75 (4) of the GST Act, 2017 and remanded back to the respondent for fresh consideration on merits and in accordance with law.

8. In the result, the assessment order dated 28.12.2022 is hereby quashed and the matter is 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 adhering to the principles of natural justice and after granting the petitioner the right of personal hearing on 16.03.2023 at 10:30 a.m.



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9. With the aforementioned directions, this Writ Petition is disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

13.02.2023

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

The State Tax Officer,
Tiruvallur Assessment Circle,
No.4/109, GST Building,
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ABDUL QUDDHOSE. J.,

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**13.02.2023
(1/2)**