IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27054 of 2023
and
W.M.P.No. 26495 of 2023

M/s. P.Athimoolam Contractor,
Rep.by its Proprietor,
Mr.Periyanan Athimoolam,
No.2/28A, Pallapatti Village,
Nathahalli Post, Indur- 636 803,
Dharmapuri District. ... Petitioner

Vs

1. The Appellant Authority/Deputy Commissioner
of Commercial Taxes,
Commercial Tax Department,
Salem Circle,
Salem, Salem District.

2. The State Tax Officer,
Commercial Tax Department,
Palacode Assessment Circle,
Palacode,
Dharmapuri District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 2nd respondent dated 06.12.2022 in Reference No.33AJGPA5736L1Z9/2019-2020 and quash the same, consequently direct the respondents to refund amount along with interest, which has been recovered from the Bank of the petitioner vide payment receipt dated 05.05.2023 forthwith.

For Petitioner	:	Mr.M.R.Jothimanian
For Respondents	:	Mrs. E.Ranganayaki Special Government Pleader

ORDER

Mrs.E.Ranganayaki, learned Special Government Pleader takes notice on behalf of the respondents.

2. *Prima Facie,* the petitioner has been subject to the gross injustice. The tax due for the month of September 2019 and October 2019 was belatedly paid by the petitioner along with the returns filed during the month of March on 11.11.2020 in Form GSTR -3B under Rule 61(5) of the GST Act. A further sum of Rs.4,13,222/- has also been recovered for the same amount, pursuant to the impugned order dated 06.12.2022. The said order has been passed after GST ASMT - 10 dated

18.08.2020 and 26.12.2020 were issued and after notice in DRC - 01 were issued to the petitioner on 21.02.2022. However, the petitioner failed to respond and thus the aforesaid order came to be passed on 06.12.2022. Thus, petitioner was at fault.

3. However, considering overall facts and circumstances and considering the fact that the petitioner appears to have discharged the tax liability by paying the amount and filing the return in GSTR - 3B for the period March 2020 on 11.11.2020. Court is inclined to set aside the impugned order and remit the case back to the respondents to pass a fresh order on merits and in accordance with law, within a period of thirty (30) days from the date of receipt of a copy of this order.

4. The amount recovered directly from the petitioner's bank account on 05.05.2023 shall be refunded to the petitioner or adjusted subject to the final out come of the proceedings. Meanwhile, the petitioner may file a fresh representation with the respondents, within a period of one week from the date of receipt of a copy of this order.

5. This writ petition is disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

14.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
jas/nsl

To
1. The Appellant authority/Deputy Commissioner
of Commercial Taxes,
Commercial Tax Department,
Salem Circle,
Salem, Salem District.

2. The State Tax Officer,
Commercial Tax Department,
Palacode Assessment Circle,
Palacode,
Dharmapuri District.

C.SARAVANAN, J.

jas

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