BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.21188 of 2023
and
W.M.P.(MD).No.17596 of 2023

Subramani Jegan,
Proprietor, M/s. J K Agencies,
2018, TNSTC DEPO Near,
Madurai Road,
Virudhunagar-626 001.
Having permanent address in
6/609, 1A, Bharathiar St,
Lakshmi Nagar, Virudhunagar.

... Petitioner

vs.

The Deputy State Tax Officer-1,
Virudhunagar 1 Assessment Circle,
Commercial Taxes Buildings,
Virudhunagar. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in GSTIN: 33BOAPJ7561L1ZS/2018-19 dated 21.03.2023 issued by the Respondent and quash the same as arbitrary, illegal, without jurisdiction, and direct the respondent to pass order afresh after affording opportunity of personal hearing within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.C.Baskaran,
Government Advocate

<u>O R D E R</u>

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order dated 21.03.2023, consequently direct the respondents to conduct a fresh enquiry after affording opportunity of personal hearing.

2. The learned Counsel appearing for the petitioner submitted that the petitioner started the Aavin Booth on 22.06.2018 and was running the same as Aavin Milk Booth-cum-Tea Shop. Subsequently, the Aavin authorities directed the petitioner to relocate the existing Aavin Booth on 13.12.2018. Thereafter, the petitioner had closed the said booth rather than shifting it and went to Bangalore in search of job. The contention of the petitioner is that for assessment year 2018

to 2019, the petitioner is liable to pay the tax only from 22.06.2018 to 13.12.2018. Moreover, the claim of the petitioner is that certain Aavin products are exempted and some of the products may be included in the GST net. However, the respondents have taken the entire profit and loss and has imposed the tax.

3. Moreover, from the impugned order it is evident that the show cause notice was issued on 09.02.2023 and the personal hearing is on 13.03.2023 and the impugned order is passed 21.03.2023, which is one week from the date of personal hearing and the order is passed without serving the show cause notice to the petitioner.

4. Therefore, the respondent has erred in passing the impugned order by taking the exempted products and levied the GST and also passed the order by violating the principles of natural justice and hence, the impugned order is liable to be quashed and accordingly quashed. The matter is remitted back to the concerned authorities. The petitioner shall submit objections within a period of three weeks from the date of receipt of the copy of the order and the respondent is

directed to afford opportunity of personal hearing to the petitioner, thereafter pass an order within a period of four weeks (4) therefrom.

5. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
Sml/Tmg

04.09.2023

To

The Deputy State Tax Officer-1,
Virudhunagar 1 Assessment Circle,
Commercial Taxes Buildings,
Virudhunagar.

S.SRIMATHY, J

Sml/Tmg

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