BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.28242 of 2023
and W.M.P(MD).Nos.24308, 24311 and 24313 of 2023

M/s.VJ Enterprises,
Rep.by its Partner,
V.Suresh .. Petitioner

vs.

1.The Deputy Commissioner,
(GST Appeals) (State Tax),
Madurai & Tirunelveli @ CT Buildings,
A.R.Line Road,
Palayamkottai,
Tirunelveli.

2.The State Tax Officer,
Nanguneri,
Tirunelveli District.

3.The Manager,
Tamil Nadu Mercantile Bank,
Thisayanvilai Branch,
Tirunelveli District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent made in GSTIN.33AASFV5385P1Z3/2020-2021 dated 03.05.2023 and quash the same as illegal.

For Petitioner : Mr.N.Shanmuga Selvam

For Respondents : Mr.J.K.Jayaseelan
Government Advocate
for R1 and R2

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O R D E R

This Writ Petition has been filed challenging the impugned order passed by the second respondent, dated 03.05.2023 demanding a sum of Rs.15,26,874/- (Rupees Fifteen Lakhs Twenty Six Thousand Eight Hundred and Seventy Four only) as tax together with interest and penalty from the petitioner for having produced the fake invoices to claim Input Tax Credit.

2. The petitioner is a scrap purchaser and is doing business in the name and style of VJ Enterprises. He is a registered tax payer under the Tamil Nadu Goods and Sales Tax Act, 2017 and the petitioner has claimed Input Tax Credit in the return filed for the financial year 2020-2021, based on the invoices issued by the

Golden Traders, Chennai. On surprise inspection conducted at Golden Traders, Chennai, the Proprietor of the said Trader has given a statement that he has not supplied the goods, however, issued invoices as claimed by the petitioner. Based on that statement, an enquiry was contemplated against the petitioner and a show cause notice was issued in Form DRC 01 under Section 74(1) of the Tamil Nadu Goods and Service Tax Act, 2017 on 05.01.2023 through GST Portal. An opportunity of personal hearing was also provided to the petitioner, but the petitioner failed to appear and therefore, the impugned order has been passed on 03.05.2023, calling upon the petitioner to pay a sum of Rs.15,26,874/- (Rupees Fifteen Lakhs Twenty Six Thousand Eight Hundred and Seventy Four only) as tax together with interest and penalty. Aggrieved over the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner submits that action has been initiated against the petitioner based on the statement of the Proprietor of the Golden Traders, however, the respondents have not provided an opportunity of personal hearing. He further submits that the show cause notice was issued to the petitioner only through the GST Portal and the petitioner has failed to note the same and therefore, he has not appeared before the respondent.

4. The learned Government Advocate appearing for the respondents submits that the petitioner was issued with a show cause notice under Section 74(1) of the Tamil Nadu Goods and Service Tax Act, 2017 and was provided with an opportunity of personal hearing, as per Section 75(4) of the Tamil Nadu Goods and Service Tax Act, 2017. However, the petitioner has failed to avail the same and therefore, with the available materials, the second respondent has proceeded further and passed the impugned order.

5. This Court considered the rival submissions made by both sides and perused the materials available on record.

6. Admittedly, action has been initiated against the petitioner for having produced the fake invoices without purchasing the goods from the Golden Traders. However, a show cause notice was issued to the petitioner only through the web portal and the petitioner is an illiterate person. Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc., are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies. Though they are providing e-mail IDs at the time of Registration, the

applications are prepared by some Agents by creating an e-mail ID. On reality, most of the Traders are not accustomed with handling of e-mails. The Department shall workout the possibilities of issuing these notices in the respective regional languages and also by SMS and registered post, so that, the uneducated traders can also respond to these notices to some extent, otherwise, these notices will be an empty formality and will not serve any purpose.

7. In the present case, by simply issuing a show cause notice in the portal, the second respondent has proceeded further and passed the impugned order demanding tax together with interest and penalty. The show cause notice was issued in English and not in vernacular language. Since notice has not been issued to the petitioner through registered post and it is not in the Regional Language, the impugned order passed by the second respondent on 03.05.2023 is set aside and the respondents are directed to issue a fresh show cause notice in the Regional Language through registered post or through SMS to the petitioner enabling him to understand the issue and contest the case, within a period of two weeks from the date of receipt of a copy of this order.

8. Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.11.2023

Index : Yes / No
NCC : Yes / No
Internet : Yes
ssb

To
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B.PUGALENDHI, J.

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