BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.28471 of 2023 and
WMP(MD) Nos.24514, 24519 & 24522 of 2023

M/s.VJ Enterprises,
Rep by its Partner,
Mr.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,
Tamilnadu Mercantile Bank Ltd.,
Tisayanvilai Branch,
Tirunelveli District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the second respondent made in GSTIN.33AASFV5385P1Z3/2021-2022 dated 03.05.2023 and quash the same as illegal.

For Petitioner : Mr.N.Shanmuga Selvam

For Respondents : Mr.G.V.Vairam Santhosh, Additional Government Pleader

ORDER

This Writ Petition is filed challenging the order passed by the State Tax Officer, Tirunelveli/the second respondent herein, dated 03.05.2023 demanding a sum of Rs.5,93,118/- (Rupees Five Lakhs Ninety Three Thousand One Hundred and Eighteen Only) as tax together with interest and penalty from the petitioner for the year 2021-2022 on the ground of fraudulent claim of Input Tax Credit.

2. The petitioner, a scrap purchaser is doing business in the name and style of 'VJ Enterprises'. The petitioner is a registered tax

payer under the Tamil Nadu Goods and Sales Tax Act, 2017. The petitioner has claimed Input Tax Credit in the return filed for the financial year 2021-2022, 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 they had issued invoices in the name of the petitioner even without making actual supply of goods, based on which, en enquiry was conducted 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.5,93,118/- (Rupees as tax together with interest and penalty. Aggrieved over the same, the present Writ Petition has been filed.

3.When this writ petition is taken up for admission today, the learned counsel on either side submit that similar writ petition filed by the petitioner for the year 2020-2021 in WP(MD) No.28471 of 2023 has already been entertained by this Court and this Court has set aside the impugned order and remanded the matter back to the respondents for fresh consideration and the relevant portion is extracted as under:-

6. Admittedly, action has been initiated against the petitioner for having produced the fake invoices without purchasing the goods from the Golden Traders, based on the statement of a Proprietor of the Golden Traders and enquiry was conducted. However, a show cause notice was issued to the petitioner only through portal. Most of the traders are not accustomed with portal. The petitioner is an illiterate person and he is not expected to follow the portal and verify whether notice has been issued to him or not. When an action has been taken against the Trader, in all fairness, the respondents ought to have issued a notice either by way of a registered post or through SMS enabling them to understand the proceedings which were initiated *against them. 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. This notice was issued in English and not in vernacular language. Even the Officials of the State of Tamil Nadu are not recognizing the illiterate traders. The principles of natural justice are the basic rules which have to be provided to a person before taking action against him/her. Since notice has not been issued to the petitioner through registered post and it is not in a 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.*

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

4.In view of the above, this writ petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition are closed.

04.12.2023

NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.
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To

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B.PUGALENDHI, J.

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Order made in
W.P.(MD)No.28471 of 2023 and
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