IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 24.01.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.1399 of 2024
and W.M.P.No.1423 of 2024

Zeenath Rexine
No.111/53, Appu Maistry Street,
Seven Wells, Chennai - 600 001.
(Represented by Abdulrahim Ahmed Kabeer) ... Petitioner

-vs-

Assistant Commissioner - 2,
Mannady Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai North Division - II, Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in impugned order issued vide Reference No. Ref No.ZD330823034312T dated 07.08.2023 and quash the same and consequently direct the respondent to grant sufficient opportunity of personal hearing in accordance with law.

For Petitioner : Ms.Anu Viswaath
for Mr.K.Senguttuvan

For Respondent : Mrs.E.Ranganayaki, AGP (T)

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ORDER

The petitioner assails an assessment order dated 07.08.2023 imposing tax liability of Rs.2,01,097/-, interest of Rs.28,859/- and penalty of Rs.20,110/- from April 2022 to September 2022.

2. The petitioner asserts that he is engaged in the business of trading in rexine. He had engaged the services of a GST practitioner, Mr.V.Sahaya Pusparaj. Since the petitioner relied entirely on the said consultant, it is stated that the petitioner was not aware of the intimation in Form DRC-01A or the show cause notice in Form DRC-

01. Therefore, the petitioner also did not participate in proceedings culminating in the assessment order. In order to substantiate the contention that the consultant had not kept the petitioner informed about these developments, an affidavit affirmed by the consultant on 22.12.2023 was placed on record. At paragraph 5 of the said affidavit, the consultant has stated that the notices were not available on the window / screen for communication relating to regular returns and that the notices were in the window relating to additional notices.

3. For the above reasons, learned counsel for the petitioner submits that the petitioner be given an opportunity to contest the claim especially considering that the claim is confined to a difference in turnover as between Form GSTR-2B and GSTR-3B.

4. Mrs.E.Rangayanaki, learned Additional Government Pleader, accepts notice on behalf of the respondent. She submits that all the notices were put up on the portal of the GST Department and that the

non communication thereof by the consultant to the petitioner does not justify interference with the order. He also submits that a statutory appeal was available to the petitioner and that the petitioner failed to avail of such statutory remedy.

5. The order impugned records as under with regard to the intimation and show cause notice issued to the petitioner:

> "*Accordingly a notice in DRC-01A was issued to the tax payer on 30.01.2023, as the taxpayer has not responded to the notice issued above, a show cause notice in Form GST DRC-01 was issued to the tax payer on 25.03.2023. Further, personal hearing issued on 31.03.2023 at 12.00 PM. But they have not responded to the show cause notice and personal hearing also. Therefore the above proposal is hereby confirmed.*"

6. From the above extracts, it is abundantly clear that the petitioner did not respond either to the intimation in Form GST-DRC-01A or to the show cause notice in Form GST-DRC-01. In addition, the petitioner did not attend the personal hearing. The explanation of the petitioner is that the consultant did not keep the petitioner

informed. The consultant, in turn, states that the notices were not available on the tab relating to regular returns and were instead accessible only through the tab relating to additional notices.

7. While these explanations are not wholly convincing, the fact remains that a registered person carrying on a small business did not have the opportunity to respond to the claim made by the tax department with regard to the discrepancy between the returns in Form GSTR-2B and Form GSTR-3B. Solely for the purpose of providing an opportunity to the petitioner, the impugned order calls for interference.

8. For reasons set out above, the impugned order is quashed and the matter is remanded for re-consideration. It is made clear that the petitioner will not have an opportunity to respond to the show cause notice and the opportunity would be limited to participation in the proceedings before the assessing officer and making any

submissions in relation thereto. Any such submission shall be made by the petitioner within a maximum period of ***two weeks*** from the date of receipt of a copy of this order. The assessing officer is directed to complete the re-assessment within a maximum period of ***two months*** from the date of receipt of a copy of this order by issuing a reasoned decision.

10. W.P.No.1399 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.1423 of 2024 is closed.

24.01.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

Assistant Commissioner - 2,
Mannady Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai North Division - II, Chennai 600 003.

SENTHILKUMAR RAMAMOORTHY,J

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