IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.2532 of 2024
and W.M.P.Nos.2770, 2771 & 2772 of 2024

M/s.Sree Nagammal Shipping and Allied Services,
Rep. by its Proprietor Mr.C.Venkatachalam,
No.120, Shop No.6, Linghi Chetty Street,
Parrys, Chennai 600 001. ... Petitioner

-vs-

1.The Commissioner,
O/o.The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai 600 005.

2.The Deputy State Tax Officer - 1,
Harbour Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai 600 003.

3.The Assistant Commissioner (ST)(FAC),
Harbour Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai 600 003.

4.The Branch Manager,

Punjab National Bank,
158, Linghi Chetty Street, Chennai 600 001.

5.The Branch Manager,
Punjab National Bank,
Plot No.105, P.P.Junglighat,
Portblair, Andaman 744 103. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned order of the second respondent herein vide file No. 33AAFPV6749L2Z0/2022-23 dated 01.09.2023 and to quash the same as illegal, arbitrary, unfair, unreasonable, perverse and in clear abuse of process of law and has been violation of principles of natural justice and further direct the second and third respondents herein to re-credit the ITC amount recovered by debit / reversal to the petitioner electronic credit ledger and also direct the fourth and fifth respondents herein not to deduct any amount from the petitioner account for payment against the recovery letters / notices sent to the petitioner.

For Petitioner : Mr.A.K.Jayaraj

For Respondents 1 to 3 : Mr.V.Prasanth Kiran GA (T)

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ORDER

An assessment order dated 01.09.2023 is challenged by the petitioner on the ground that a personal hearing was not provided. The petitioner states that he is engaged in the business of providing shipping and allied services. Pursuant to a notice in Form ASMT-10 dated 16.05.2023, an intimation and show cause notice were issued to the petitioner. Since such notices were uploaded on the portal and no separate communication was received by the petitioner through post or courier, it is stated by the petitioner that he was unable to reply to such intimation and show cause notice. Eventually, the impugned assessment order was issued.

2. Learned counsel for the petitioner invited my attention to the

impugned assessment order and pointed out that it refers to a personal hearing offered on 16.08.2023. By turning to the show cause notice, he points out that no personal hearing was provided and that the column relating to personal hearing shows 'not applicable'.

3. Learned counsel also points out that the respondent initiated action in December 2023 and reversed ITC amounts of Rs.2,36,907/- under CGST, Rs.2,42,456/- under SGST and Rs.2,59,720/- under Cess.

4. Mr.V.Prasanth Kiran, learned Government Advocate, appears on behalf of respondents 1 to 3. He submits that the petitioner failed to respond to the notice in Form ASMT-10, the intimation and the show cause notice. He also submits that the impugned assessment order was issued in September 2023, whereas the petitioner approached this Court in January 2024.

5. On examining the show cause notice, the contention of learned counsel for the petitioner that no personal hearing was offered is liable to be accepted. As per Section 75(4) of the applicable GST statutes, a personal hearing is mandatory either if requested for or if an order adverse to the registered person is proposed to be issued. Since this mandatory requirement was not complied with, the order calls for interference.

6. Accordingly, the impugned assessment order dated 01.09.2023 is quashed and the matter is remanded for re-consideration by the assessing officer. The petitioner is permitted to file a reply to the show cause notice within a maximum period of ***two weeks*** from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within ***two months*** from the date of receipt of the petitioner's reply. For the

avoidance of doubt, it is made clear that the ITC amounts reversed in December 2023 shall be dealt with subject to the outcome of the remanded proceedings. As a consequence of the attachment order being quashed, the orders of attachment in respect of the petitioner's bank accounts shall stand raised.

7. W.P.No.2532 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.2770, 2771 and 2772 of 2024 are closed.

06.03.2024

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

To

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