IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.5643 & 5647 of 2024
and W.M.P.Nos.6265, 6256, 6259 & 6264 of 2024

M/s.Nandhu Traders
Represented by its Proprietor
Mrs.Pongiamman Neelavathi
No.19A, Nehruji Street, Ingur Road,
Chennimalai Erode, TN 638 051. ... Petitioner in both WP's

-vs-

1.The Commercial Tax Officer
Erode, Tamil Nadu.

2.The State Tax Officer
Inspection - III (Intelligence), Erode.

3.The State Tax Officer (INT)
Inspection Group - VI
Office of the Deputy Commissioner (ST)
Inspection, Erode. ... Respondents in both WP's

<u>PRAYER in W.P.No.5643 of 2024</u>: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records in Order passed by the Second Respondent vide GSTIN 33AFKPN2294N1ZY - 2020-21 dated 31.08.2023 and seeking to quash of the same as arbitrary along with the consequential DRC-07 Order under Section 74, Ref.No. ZD3308231796731 dated 31.08.2023 issued by the first respondent, and further direct the first and second respondent to drop the proceedings and GSTIN: 33AFKPN2294N1ZY - 2020-21 dated 31.08.2023.

<u>PRAYER in W.P.No.5647 of 2024</u>: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records in Order passed by the Second Respondent vide GSTIN 33AFKPN2294N1ZY - 2021-22 dated 31.08.2023 and seeking to quash of the same as arbitrary along with the consequential DRC-07 Order under Section 74, Ref.No. ZD3308231803958 dated 31.08.2023 issued by the first respondent, and further direct the first and second respondent to drop the proceedings and GSTIN: 33AFKPN2294N1ZY - 2021-22 dated 31.08.2023.

For Petitioner in both WP's : Mr.M.Narasimha Bharathi

For Respondents in both WP's : Mr.C.Harsha Raj, AGP (T)

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COMMON ORDER

The petitioner assails an order dated 31.08.2023 primarily on the ground that principles of natural justice were breached. The petitioner is a registered person under applicable GST statutes. Pursuant to an inspection carried out at the registered place of business of the petitioner in November 2022, proceedings were initiated by issuing an intimation in Form DRC-01A. This was followed by a show cause notice dated 07.02.2023. According to the petitioner, in view of his unfamiliarity with the use of computers, he was unaware about proceedings. The impugned assessment order was issued in these facts and circumstances without hearing the petitioner.

2. Learned counsel for the petitioner submits that the intimation and show cause notice were merely uploaded on the GST portal and not communicated to the petitioner in any of the other modes specified in Section 169 of the applicable GST statutes. On account of being unaware of proceedings, he submits that the petitioner could not contest the tax demand. He also points out that a personal hearing was not provided to the petitioner.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. He points out that the assessment order was preceded both by an intimation and a show cause notice and that such assessment order was issued in August 2023. He also

points out that the petitioner was offered personal hearings on at least two dates and this would be evident from the impugned order.

4. The documents on record clearly indicate that an intimation and show cause notice preceded the assessment order. The records also disclose that personal hearings were offered to the petitioner. In these circumstances, the explanation of the petitioner that he was unaware of proceedings, in spite of being a registered person, is not wholly convincing. At the same time, it should be recognized that the petitioner was not heard and therefore did not have the opportunity to contest the tax demand on merits.

5. On instructions, learned counsel for the petitioner is agreeable to remit 10% of the disputed tax demand as a condition for remand. In these circumstances, solely with a view to provide an opportunity to the petitioner, the impugned assessment order is quashed subject to the condition that the petitioner remits 10% of the

disputed tax demand within a period of ***three weeks*** from the date of receipt of a copy of this order. The petitioner is also permitted to reply to the show cause notice within the above mentioned period of ***three weeks***. Subject to the receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and issue a fresh assessment order within a maximum period of ***two months*** thereafter.

6. W.P.Nos.5643 and 5647 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.6265, 6256, 6259 and 6264 of 2024 are closed.

06.03.2024

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

To

1.The Commercial Tax Officer
Erode, Tamil Nadu.

2.The State Tax Officer
Inspection - III (Intelligence), Erode.

3.The State Tax Officer (INT)
Inspection Group - VI
Office of the Deputy Commissioner (ST)
Inspection, Erode.

<u>SENTHILKUMAR RAMAMOORTHY,J</u>

rna

<u>W.P.NoNos.5643 & 5647 of 2024</u>
<u>and W.M.P.Nos.6265, 6256, 6259 & 6264 of 2024</u>

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