IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.6049 & 6054 of 2024 and
W.M.P.Nos.6692, 6694, 6700 & 6701 of 2024

In both WPs.

M/s.Vijaya Builders,
Represented by its Proprietor P.Velladurai,
13, Subbammal Illam,
Sri Rajeswari Nagar,
Saravanampatti,
Coimbatore-641 035. ...Petitioner

Vs.

1.The Assistant Commissioner (ST),
Saravanampatti West Assessment Circle,
Coimbatore-641 018.

2.The Manager,
Canara Bank, Saravanampatti Branch,
Coimbatore-641 107. ... Respondents

Prayer in W.P.No.6049 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the 1st respondent in Ref.GSTIN:33AGFPV6557N2ZM/2018-2019 dated 25.07.2023 along with summary of the order in Form GST DRC-07 in Ref.No.ZD330723103683M dated 25.07.2023 and the consequential proceedings in his Ref.No.GSTIN:33AGFPV6557N2ZM/2023 dated 24.11.2023, quash the same and consequently direct the 1st respondent to entertain the records, documents and reply to the notices from the petitioner firm and then pass order after affording a personal hearing to the petitioner firm and to lift the bank attachment notice issued to the 2nd respondent.

Prayer in W.P.No.6054 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the 1st respondent in Ref.GSTIN:33AGFPV6557N2ZM/2019-2020 dated 25.07.2023 along with summary of the order in Form GST DRC-07 in Ref.No.ZD3307231030606 dated 25.07.2023 and the consequential proceedings in his Ref.No.GSTIN:33AGFPV6557N2ZM/2023 dated 24.11.2023, quash the same and consequently direct the 1st respondent to entertain the records, documents and reply to the notices from the petitioner firm and then pass order after affording a personal hearing to the petitioner firm and to lift the bank attachment notice issued to the 2nd respondent.

In both WPs.

For Petitioner : Mr.S.Raveekumar
for Mr.M.Hariharan

For R1 : Mr.T.N.C.Kaushik,
Additional Government Pleader (T)

COMMON ORDER

In both these writ petitions, assessment orders dated 24.11.2023 are assailed primarily on the ground of breach of principles of natural justice.

2. The petitioner asserts that he became aware of the impugned proceedings only upon the petitioner's bank informing him of the attachment order. He also submits that notices and orders were only uploaded on the GST portal and not communicated to him by any other mode. The present writ petitions were filed in the said facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the reminder dated 03.07.2023 and pointed out that the petitioner was called upon to attend a personal hearing within three days and that such personal hearing was scheduled before the date on which the reply was to be given. He also submits that the petitioner was not heard before the assessment order was issued.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for 1st respondent. He submits that the impugned assessment orders indicate that the petitioner was provided sufficient opportunity in as much as the impugned assessment orders were preceded by an intimation and a show cause notice. He also points out that personal hearings were offered to the petitioner on at least three dates.

5. The documents on record reveal that proceedings were initiated pursuant to a notice in Form ASMT-10 in November 2020. Thereafter, the intimation was issued in May 2023 and the assessment order was issued on 25.07.2023. As a registered person under applicable GST statutes, the explanation of the petitioner that he was unaware of the

notices and the assessment order is not entirely convincing. However, it is noticeable that the petitioner was not granted sufficient time for the personal hearing by notices dated 03.07.2023 and 17.07.2023 and, admittedly, the petitioner was not heard.

6. On instructions, learned counsel for the petitioner submits that the petitioner is agreeable to remit 10% of the disputed tax demand under each assessment year as a condition for remand.

7. In these circumstances, it is just and necessary to provide an opportunity to the petitioner to contest the tax demand by putting the petitioner on terms.

8. For reasons set out above, the impugned orders are quashed and these matters are remanded to the assessing officer for reconsideration. The petitioner is permitted to submit a reply to the show cause notice within a maximum period of 15 days from the date of receipt of a copy of this order along with the remittance of 10% of the disputed tax demand under each assessment order. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand under each assessment

order was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh assessment orders within a period of two months from the date of receipt of the petitioner's reply. On account of the assessment orders being quashed, the bank attachments are raised.

9. These writ petitions are disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

07.03.2024

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

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To

1.The Assistant Commissioner (ST),
Saravanampatti West Assessment Circle,
Coimbatore-641 018.

2.The Manager,
Canara Bank, Saravanampatti Branch,
Coimbatore-641 107.

SENTHILKUMAR RAMAMOORTHY,J.

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