IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6355 of 2024 and
W.M.P.No.7077 of 2024

M/s.Agra Coal Impex,
Represented by its Partner,
Mr.Abishek Bansal,
No.74,Chittoornatham Village,
Gummidipoondi Taluk,
Tiruvallur, Tamil Nadu-601 201. ...Petitioner

Vs.

1.The Deputy State Tax Officer-2,
Gummidipoondi Assessment Circle,
No.32, Room No.112,
Integrated Commercial Taxes Complex,
Elephant Gate Bridge Road,
Vepery, Chennai-600 003.

2.The Assistant Commissioner (ST),
Egmore Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chetpet, Chennai-600 031. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the impugned proceedings of the 1st respondent in GSTIN:33AATFA9772G1ZZ/2017-2018 dated

27.04.2023 and quash the same as passed contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader (T)

ORDER

An assessment order dated 27.04.2023 is the subject of challenge.

2. The petitioner was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and asserts that a sum of Rs.1,33,123/-, which was paid as purchase tax, was eligible to be transitioned to the GST regime. In relation to the above issue, it is stated that the petitioner received a show cause notice in February 2020 and replied to the same on 26.02.2020 stating that this amount is eligible for transition under Section 140 of applicable GST statutes. Thereafter, the petitioner states that they were unaware of the issuance of the intimation and show cause notice culminating in the impugned assessment order.

3. Learned counsel for the petitioner submits that there is no reference in the impugned assessment order to the petitioner's reply dated

26.02.2020 and the explanation provided therein in support of the petitioner's entitlement to transitional credit. He further submits that the entire demand of Rs.4,52,341/-, which includes tax, interest and penalty, was recovered from the petitioner's bank account pursuant to an order of assessment.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. He points out that the petitioner failed to respond to the show cause notice or avail of an opportunity of personal hearing and that the impugned order was issued in those circumstances.

5. The documents on record include the show cause notice dated 23.02.2023. The said notice offered a personal hearing to the petitioner. Therefore, the respondents cannot be faulted for the petitioner failing to avail of such opportunity. At the same time, it is noticeable that the impugned order does not make reference to the earlier reply issued by the petitioner in February 2020. It is also noticeable that a sum of Rs.4,55,013.70 was appropriated from the petitioner's bank account in the Punjab National Bank as against the total amount due of Rs.4,52,341/- under the impugned assessment order. Therefore, at this juncture, revenue

interest is fully secured. In these circumstances, the impugned order calls for interference solely with a view to provide an opportunity to the petitioner.

6. For reasons set out above, the impugned assessment order is quashed and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice dated 23.02.2023 within a 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 a period of two months from the date of receipt of the petitioner's reply. It is made clear that the sum of Rs.4,55,013.70, which was appropriated pursuant to the attachment of the petitioner's bank account, shall be retained subject to the outcome of the remanded proceedings.

7. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petition is

closed.

11.03.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J.

Kj

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