IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.6773 of 2024 and
W.M.P.Nos.7546 & 7549 of 2024

M/s. Sri Maruthi Enterprises,
Represented by its Proprietor
Govindan Gopinathan,
Door No.4693, 2nd street,
1st main road, MMDA,
Mathur, Manali,
Chennai-600 068. ... Petitioner

-vs-

The Deputy State Tax Officer - II,
Manali Assessment Circle,
Door No.32,
Integrated Commercial Taxes Building,
Elephant Gate Bridge Road,
Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in GSTIN: 33BJVPG0580N1ZR, dated 29.12.2023, and quash the same as illegal, arbitrary without jurisdiction and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.C.Harsha Raj, AGP(T)

ORDER

An assessment order dated 29.12.2023 is under challenge in this writ petition.

2. The petitioner is a civil contractor and a registered person under applicable GST statutes. Upon scrutiny of returns filed by the petitioner, a notice in Form ASMT-10 was issued alleging discrepancies in such returns. Thereafter, a show cause notice was issued to the petitioner in August 2023. Such show cause notice was replied to by the petitioner in September 2023 and the petitioner also enclosed documents along with such reply. The impugned assessment order was issued thereafter in December 2023.

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

impugned assessment order and pointed out that conclusions were drawn on the basis of Form 26AS and receipts reflected therein. By referring to the discussion in the assessment order of the petitioner's response to the show cause notice, he pointed out that the petitioner stated that Form 26AS is only a statement that provides details of receipts in respect of which TDS or TCS was deducted and that it cannot be construed as the taxable turn over of such person.

4. With reference to the reply issued by the petitioner, he pointed out that the petitioner had submitted documents such as the audited profit and loss account and balance sheet, audit report in Form 3CB & 3CD, Form 26AS and GSTR 1, 2A and 2B. By contending that no personal hearing was granted, learned counsel submits that if a personal hearing had been granted, the petitioner would have been able to explain the facts and persuade the assessing officer with regard to the discrepancy between Form 26AS and the petitioner's returns. Learned counsel also submits that the assessment proceedings are barred by limitation. On instructions

and without prejudice, learned counsel submits that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.

5. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. By referring to the impugned order, he points out that principles of natural justice were adhered to by issuing a show cause notice and by also considering the petitioner's reply thereto. He further points out that a personal hearing was offered to the petitioner under the show cause notice and that the petitioner failed to avail of such opportunity.

6. The documents on record clearly indicate that the assessment order was preceded by a show cause notice, which indicates that a personal hearing was offered. However, the assessment order also discloses that the petitioner was not heard. The petitioner is a civil works contractor and it is quite common for such civil work contractors to receive payments in the form of mobilization advances

and against running account bills. The operative portion of the impugned assessment order clearly indicates that the tax liability was confirmed by disregarding the objections of the petitioner that the receipts in Form 26AS cannot be treated as the turnover. In these circumstances, the interest of justice demands that the petitioner should be heard. Solely for this reason, the impugned assessment order warrants interference, albeit by putting the petitioner on terms.

7. Accordingly, the impugned assessment order is quashed subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within a maximum period of ***two weeks*** from the date of receipt of a copy of this order. Subject to being satisfied that 10% of the disputed tax demand was received, the assessing officer is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue a fresh assessment order in accordance with law within a maximum period of ***two months*** thereafter. The petitioner is also permitted to submit additional documents, including the documents called for by the

assessing officer previously.

8. W.P.No.6773 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.7546 and 7549 of 2024 are closed.

14.03.2024

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

The Deputy State Tax Officer - II,
Thiruvottiyur Assessment Circle,
Door No32, Room No.215, 2nd Floor,
Integrated Commercial Taxes Building,
Elephant Gate Bridge Road,

Chennai 600 003.

SENTHILKUMAR RAMAMOORTHY,J

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