IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6974 of 2024 and
W.M.P.Nos.7776, 7778 & 7780 of 2024

A.Kumar Hardwares,
Represented by its Proprietor,
Mr.Appadurai Jebakumar,
No.12/206, Pallavavarman street,
Singaperumal Koil,
Tamil Nadu-603 204. ...Petitioner

Vs.

1.The State Tax Officer,
Chengalpattu Assessment Circle,
No.16A, 1st floor, 1st main road,
Anna nagar, Chennai-603 001.

2.The Deputy Commissioner (ST),
Chengalpattu Division,
No.26, Abirami Complex,
Mahalakshmi Nagar,
Thimmavaram, Chengalpattu-603 101.

3.The Bank Manager,
City Union Bank Ltd.,
No.2 By 18, Station Road,
Singaperumal Koil-603 204. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records in

Reference No.ZD331023112200K DRC-07 dated 18.10.2023 on the file of the 1st respondent and quash the same as contrary to law, consequently direct the respondents 2 & 3 to defreeze the bank account C.A. No.185109000098533 of the petitioner-Registered Taxable Person.

For Petitioner : Mr.S.Ramanan

For R1 & R2 : Mr.V.Prashanth Kiran, Government Advocate (T)

ORDER

An assessment order dated 18.10.2023 and the subsequent order attaching the petitioner's bank account are challenged.

2. The petitioner is a registered person under applicable GST enactments. He asserts that he was unaware of proceedings culminating in the impugned assessment order and attachment order until the bank attachment order was communicated to the petitioner. It is further stated that the petitioner carries on business on a small scale and had engaged a consultant for GST compliances. Since such consultant had not kept the petitioner informed, the petitioner states that he was unaware of proceedings until the bank attachment was communicated to him.

3. Learned counsel for the petitioner refers to sub-section (2) of Section 73 of the Tamil Nadu Goods and Services Tax Act 2017 (the TNGST Act) to contend that there should be a three month gap between the date of show cause notice and the date of the assessment order. He further submits that the petitioner was not provided a reasonable opportunity and that the petitioner is agreeable to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for respondents 1 & 2. He points out that the petitioner was provided multiple opportunities to contest the tax demand and that proceedings commenced with issuance of notice in Form ASMT 10.

5. Sub-section (2) of Section 73 of the TNGST Act provides that the show cause notice should be issued at least three months prior to the expiry of the limitation period prescribed in sub-section (10) thereof. It does not prescribe that there should be a three month interval between date of issuance of show cause notice and the date of assessment order. Therefore, the contention in this regard by learned counsel for the petitioner is untenable.

6. The impugned order reveals that the petitioner was provided opportunities by issuing notice in Form ASMT 10 and show cause notice in Form GST DRC-01. However, it is also clear that the petitioner did not participate in proceedings. In these circumstances, albeit by putting the petitioner on terms, the petitioner should be provided an opportunity of being heard. Solely for such reason, the impugned assessment order calls for interference.

7. Therefore, the impugned assessment order dated 18.10.2023 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. Within the aforesaid period, the petitioner is also permitted to submit a reply to the show cause notice. Upon receipt thereof 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 thereafter issue a fresh assessment order within a period of two months from the date of receipt of the petitioner's reply. In view of the assessment order being quashed, the bank attachment shall stand raised forthwith.

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

19.03.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

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