IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.7343 of 2024
and W.M.P.Nos.8232 & 8234 of 2024

M/s.Agastya Agro Limited
represented by
its authorized signatory P.Chellapandian
18/34 E, Sivamanimills Compound,
Meyyanur Road, Neuro Foundation,
Salem, Salem, Tamil Nadu 636 004. ... Petitioner

-vs-

The Commercial Tax Officer,
Salem, Zone - Salem - I, Circle,
Arisipalayam. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, quashing the impugned order GSTN: 33AACCA0117F1ZJ / 2017-18 dated 27.12.2023 passed by the respondent with the consequential relief of directing the respondent herein to re-consider all the submissions made by the petitioner besides permitting the petitioner to submit all necessary documents and also by giving a proper personal hearing so that all the intrinsic details involved in the issue may be understood paving way for passing a reasoned order.

For Petitioner : Mr.M.Narasimha Bharathi

For Respondent : Mr.V.Prashanth Kiran, GA (T)

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ORDER

An order dated 27.12.2023 is impugned primarily on the ground that no personal hearing was provided to the petitioner.

2. The petitioner is engaged in the manufacture of agro chemicals and pesticides. The petitioner received a notice in Form GST DRC-1 on 25.09.2023. The petitioner asserts that such show cause notice was replied to on 30.09.2023 and 04.10.2023. Thereafter, another show cause notice was issued to the petitioner on 26.12.2023

and the impugned order was issued on 27.12.2023.

3. Learned counsel for the petitioner referred to the show cause notice dated 26.12.2023 and pointed out that the respondent has indicated 'not applicable' in respect of the date of personal hearing. By referring to the reply dated 04.10.2023, he points out that the petitioner expressly requested for a personal hearing. Thus, he contends that there was violation of the requirements of sub-section (4) of Section 75 of the Tamil Nadu Goods and Services Tax Act, 2017.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. On instructions, he contends that neither the reply dated 30.09.2023 nor the reply dated 04.10.2023 were received by the respondent. By referring to the impugned order, he points out that the only reply received by the respondent was the reply dated 18.10.2023. He further submits that the petitioner merely requested for 30 days' time by the reply dated

18.10.2023. With regard to personal hearing, he points out that a personal hearing was offered to the petitioner when the earlier show cause notice was issued and that the petitioner failed to avail of such personal hearing.

5. On examining the show cause notice dated 25.09.2023, it is evident that a personal hearing was offered to the petitioner on 10.10.2023. While the petitioner asserts that two replies were issued on 30.09.2023 and 04.10.2023, the respondent denies receipt thereof and there is no evidence that such replies were uploaded on the GST portal. Hence, the petitioner cannot be absolved of all responsibility for the current state of affairs.

6. However, it is noticeable that no personal hearing was offered in the second show cause notice dated 26.12.2023 and the impugned order was issued one day later on 27.12.2023. Thus, the petitioner was deprived of a reasonable opportunity to respond to such show cause notice and be heard in person as required by

statute.

7. On instructions, learned counsel for the petitioner submits that the petitioner is agreeable to remit 5% of the disputed tax demand as a condition for remand.

8. In these circumstances, the impugned order is quashed and the matter is remanded for re-consideration subject to the petitioner remitting 5% of the disputed tax demand within ***three weeks*** from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice dated 26.12.2023 within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 5% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue a fresh order within ***two months*** from the date of receipt of the petitioner's reply.

9. W.P.No.7343 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.8232 and 8234 of 2024 are closed.

21.03.2024

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

To

The Commercial Tax Officer,
Salem, Zone - Salem - I, Circle,
Arisipalayam.

SENTHILKUMAR RAMAMOORTHY,J

rna

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