IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7314 of 2024 and
W.M.P.Nos.8181 & 8182 of 2024

Dhanasekaran Thenmozhi ...Petitioner

Vs.

Deputy Commissioner,
Office of the Deputy Commissioner of GST
and Central Excise,
Parrys Division, North Commissionerate,
2054, 12th main road, Newry Tower,
Anna Nagar, Chennai-600 040. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in Order in Original No.DIN:20220959TK000036764 dated 23.09.2022 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Ms.P.Sangamithra
for Mr.Joseph Prabakar

For Respondent : Mr.Ramesh Kutty,
Senior Standing Counsel

O R D E R

An order dated 23.09.2022 is assailed on the ground that the petitioner was not provided a reasonable opportunity to contest the service tax demand.

2. The petitioner states that she had engaged the services of a consultant to take care of service tax compliances. Since such consultant did not keep the petitioner informed about proceedings initiated against her, she states that she was unaware of such proceedings until she was informed about the exparte order dated 23.09.2022.

3. Learned counsel for the petitioner submits that the impugned order warrants interference not only because of breach of principles of natural justice, but also because the petitioner was eligible to claim the threshold exemption of Rs.10,00,000/-.

4. On instructions, learned counsel for the petitioner agrees to remit 20% of the disputed tax demand as a condition for remand.

5. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice for the respondent. He points out that a show cause notice was issued to the petitioner on 21.10.2021. The petitioner did not reply thereto. He also points out that a personal hearing was granted on several dates in the year 2022 and that the petitioner did not respond to such notices for personal hearing. Therefore, he submits that no interference is called for.

6. The petitioner averred that the services of a consultant were availed of to handle service tax compliances and that she was unaware of proceedings culminating in the impugned order because she was not kept informed by such consultant. It also appears that the petitioner was running a beauty parlour. While the explanation of the petitioner is not totally convincing, it appears that the tax demand against a person carrying on business on a very small scale has been confirmed without such person having been heard.

7. For reasons set out above, the impugned order is quashed and the matter is remanded for reconsideration subject to the petitioner remitting 20% of the tax demand within a period of two 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 within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 20% of the tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of two months from the date of receipt of the petitioner's reply.

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.

21.03.2024

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

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To

Deputy Commissioner,
Office of the Deputy Commissioner of GST
and Central Excise,
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SENTHILKUMAR RAMAMOORTHY,J.

Kj

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