IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.8086 of 2024
and W.M.P.Nos.9037 & 9038 of 2024

M/s.Selva Ganesh Constructions Private Limited
Represented by its Authorized Signatory,
Shri.S.Ganesan
5/9, Rajakrishnan Road,
Teynampet, Chennai 600 018. ... Petitioner

-vs-

The Deputy State Tax Officer - 1,
Mylapore Assessment Circle,
No.249 Integrated Commercial Taxes and Registration Department,
South Tower, 2nd Floor, Anna Salai,
Nandanam, Chennai 600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 22.12.2023 having reference no. GSTIN: 33AAECS8937P2ZL/2017-18 issued by the respondent and quash the same.

For Petitioner : Mr.L.Gokulraj
for Mr.Hari Radhakrishnan

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

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ORDER

The petitioner was engaged in the business of providing construction services. Upon discontinuing such business in the year 2019, the petitioner applied for the cancellation of its GST registration. Such cancellation was effective from 01.11.2019. By asserting that the petitioner was unaware of show cause notice dated 30.09.2023 and reminders issued thereafter, the petitioner states that the respondent was requested for further time to reply by communication dated 21.12.2023. The impugned order was issued thereafter on 22.12.2023.

2. Learned counsel for the petitioner referred to the reply dated 21.12.2023 and pointed out that the petitioner stated therein that he became aware of proceedings only through the official from the office of the respondent. He further submits that the petitioner therefore requested for two weeks' time to respond to the notice, but the said request was not considered. Learned counsel further submits that the issue relates to discrepancy between the GSTR 3B returns of the petitioner and the auto populated GSTR 2A returns and that the petitioner is in possession of all relevant documents to explain the reasons for the disparity.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. With reference to the impugned order, he points out that the show cause notice was followed by three reminder notices. By referring to a judgment of the Madurai Bench

of this Court, he points out that this Court held therein that the provision of three opportunities of hearing is the maximum and that a taxpayer cannot insist on the provision of such opportunities as a matter of right. Since the petitioner herein was in a position to access the GST portal in spite of the cancellation of the registration, learned Government Advocate submits that no interference is warranted and in case the Court is of the view that an opportunity should be provided, the petitioner should be put on terms.

4. On instructions, learned counsel for the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

5. Since the GST registration of the petitioner appears to have been cancelled, it stands to reason that the petitioner would not monitor the portal on an on going basis. By reply dated 21.12.2023, the petitioner requested for two weeks' time to respond to the notice. The show cause notice was issued on 30.09.2023 and it is likely that

the limitation period was expiring in December 2023. In these circumstances, while the petitioner deserves an opportunity to contest the tax demand, it is also necessary to put the petitioner on terms.

6. For reasons set out above, the impugned order dated 22.12.2023 is quashed subject to the condition that the petitioner remits 10% 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 within the aforesaid period. Upon receipt of the reply and upon being satisfied that 10% of the disputed 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 ***two months*** from the date of receipt of the petitioner's reply.

7. W.P.No.8086 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9037 and 9038 of 2024 are closed.

28.03.2024

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

To

The Deputy State Tax Officer - 1,
Mylapore Assessment Circle,
No.249 Integrated Commercial Taxes and Registration Department,
South Tower, 2nd Floor, Anna Salai,
Nandanam, Chennai 600 035.

<u>SENTHILKUMAR RAMAMOORTHY,J</u>

rna

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