IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8105 of 2024 and
W.M.P.Nos.9051 & 9053 of 2024

M/s.Salem Kandaa Textile Mills (P) Ltd.,
Represented by its Managing Director
Sri.N.Saravanan, No.50,
New Trichy Branch Road,
Gugai, Salem-636 006. ...Petitioner

Vs.

The State Tax Officer,
Annathanapatty Circle,
Salem. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of impugned proceedings of the respondent in GSTIN:33AACCS6917P1ZW/2018-2019 and quash the proceedings dated 16.02.2024 passed therein and further direct the respondent to grant sufficient opportunity of being heard before passing final order.

For Petitioner : Mr.B.Raveendran

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

ORDER

An order dated 16.02.2024 is challenged by relying on an earlier order of this Court in *W.P.(MD)Nos.7173 & 7174 of 2023, Tvl. Kavin HP Gas Gramin Vitrak v. The Commissioner of Commercial Taxes and another* and by contending that no personal hearing was provided. Upon examining the returns filed by the petitioner, the petitioner received a show cause notice. The petitioner responded thereto by filing reply dated 22.01.2024. The order impugned herein was issued thereafter.

2. Learned counsel for the petitioner invited my attention to the impugned order and, in particular, to the discussion on defect no.3. He pointed out that the petitioner's claim for Input Tax Credit (ITC) was denied solely on the ground that the petitioner filed the GSTR 3B return for March 2019 on 12.01.2021. He also submits that such return was submitted physically on 18.10.2019. He further submits that the Madurai Bench of this Court in substantially similar circumstances concluded that the tax payer is entitled to ITC. On instructions, learned counsel submits that the petitioner is willing to remit 10% of the disputed tax demand as a

condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that the respondent denies receipt of the manual return in October 2019. As regards the judgment of the Madurai Bench of this Court, he submits that the Tax Department has carried the matter in appeal before the Division Bench.

4. The petitioner has placed on record the reply dated 22.01.2024. The impugned order was issued upon receipt of such reply on 16.02.2024. Although the impugned order refers to the personal hearing offered to the petitioner prior to the reply, the admitted position is that the petitioner was not heard in person before the impugned order was issued. Under sub-section (4) of Section 75 of the Tamil Nadu State Goods and Services Tax Act, 2017, a personal hearing is mandatory either if such hearing is requested for or if an order adverse to the tax payer is proposed to be issued. In this case, no personal hearing was provided after receipt of the petitioner's reply. The petitioner also contended that the return was filed manually on 18.10.2019 and relied on the judgment of the Madurai Bench of this Court. These aspects have to be examined by the assessing officer. Solely for this purpose, interference with the impugned order is

warranted subject to putting the petitioner on terms.

5. For reasons set out above, the impugned order dated 16.02.2024 is quashed and the matter is remanded for reconsideration subject to the petitioner remitting 10% of the disputed tax demand as agreed to as a condition for remand. The assessing officer 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 a copy of this order.

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

26.03.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
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SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

The State Tax Officer,
Annathanapatty Circle,
Salem.

W.P.No.8105 of 2024 and
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