IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.8052 of 2024
and W.M.P.Nos.9012 & 9014 of 2024

Mrs.Preetha,
Proprietrix,
Aadhi Electricals and Hardwares,
S.F.No.309/5,
Near Bharath Petrol Bunk,
Nehru Nagar Sathy Main Road,
Punjai Puliyam Patti,
Erode, Tamil Nadu 638 459. ... Petitioner

-vs-

1.The Deputy Commercial Tax Officer,
Sathyamangalam, Erode,
Tamil Nadu.

2.The State Tax Officer,
Sathyamangalam,
Erode, Tamil Nadu.

3.The Manager,
Indiam Overseas Bank,
5 By 156, A, Nambiyur Road,

Arasur Post, Sathy, TN 638 454. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records on the files of the first respondent herein in Reference Number: ZD331123055343W dated 09.11.2023 and consequential order passed by the second respondent in GSTIN: 33BCNPP8011J1ZF/2017-18 dated 04.03.2024 and quash the same.

For Petitioner : Mr.A.N.R.Jayaprathap
for Mr.V.Anandhamoorthy

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

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ORDER

An assessment order dated 09.11.2023 is assailed primarily on the ground of breach of principles of natural justice. The petitioner carries on trade in electrical and hardware goods and is a registered person under applicable GST enactments. Pursuant to the issuance of notice in Form GST ASMT-10 dated 28.02.2023, proceedings were initiated against the petitioner. Since the notices were uploaded on the GST portal, the petitioner asserts that she was unaware of the initiation of proceedings. Eventually, the impugned order dated 09.11.2023 was issued. Pursuant thereto, the bank account of the petitioner was attached by garnishee order dated 04.03.2024. The present writ petition was filed in the said facts and circumstances.

2. Learned counsel for the petitioner submits that the petitioner was unable to respond to the intimation and show cause notice because such notices were only uploaded on the GST portal and not communicated by any other mode. In this connection, he further submits that the tax demand pertains to alleged discrepancy between the petitioner's GSTR 3B returns and the auto populated GSTR 2A returns. By further submitting that the judgment of the Madurai

Bench of this Court in *D.Y. Bethel Enterprises in W.P(MD).No.2127 of 2021* was not followed and that Circular no.183 was also not adhered to, he seeks interference by this Court.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the first and second respondents. On instructions, he submits that the intimation in Form DRC-01A was also served on the petitioner by post. In spite of being provided with sufficient opportunity, he submits that the petitioner did not respond to the intimation or show cause notice. Therefore, he contends that no interference is warranted.

4. The petitioner has asserted that she was unaware of the initiation of proceedings because the intimation and notice were merely uploaded on the GST portal. On perusal of the impugned order, it is evident that the tax demand pertains to the alleged disparity between the GSTR 3B returns filed by the petitioner and the

auto populated GSTR 2A returns. In recognition of difficulties encounted by taxpayers in this regard, Circular no.183 was issued. On account of the petitioner not being heard before the impugned order was issued, the petitioner was unable to contest the tax demand. However, it should be noticed that the petitioner did not fulfil the obligation of monitoring the GST portal continually in spite of being a registered person.

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

6. In these circumstances, solely with a view to provide an opportunity to the petitioner to contest the tax demand on merits, the impugned order is quashed subject to the petitioner remitting 10% of the disputed tax demand as agreed to within ***fifteen days*** from the date of receipt of a copy of this order and the matter is remanded for re-consideration. The petitioner is permitted to submit a reply to the

show cause notice within ***fifteen days*** from the date of receipt of a copy of this order. Subject to the receipt of such reply and upon being satisfied that 10% of the disputed tax demand was received, the first 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. As a corollary to the assessment order being quashed, the bank attachment stands raised.

7. W.P.No.8052 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9012 and 9014 of 2024 are closed.

26.03.2024

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

To

1.The Deputy Commercial Tax Officer,
Sathyamangalam, Erode,
Tamil Nadu.

2.The State Tax Officer,
Sathyamangalam,
Erode, Tamil Nadu.

3.The Manager,
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SENTHILKUMAR RAMAMOORTHY,J

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