IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8569 of 2024 and
W.M.P.Nos.9516 & 9518 of 2024

Tvl. Vignesh Enterprises,
Represented by its Proprietor,
Jeevandan, S/o.Sivalogam,
No.336, Arcot Road,
Vadapalani, Chennai. ...Petitioner

Vs.

The State Tax Officer (FAC),
Vadapalani Assessment Circle,
No.1, PAPJM Buildings (Annex),
Ground Floor, Greams Road,
Chennai-600 006. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent pertaining to the impugned order dated 22.11.2023 in GSTIN/33ABOPS2112A1Z7/2017-2018 for the assessment year 2017-2018, passed by the respondent and quash the same as illegal and against the principles of natural justice.

For Petitioner : Mr.K.M.Malarmannan

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

ORDER

An order dated 22.11.2023 is the subject of challenge in this writ petition.

2. The petitioner states that he purchased a BMW car on 30.12.2017. He further submits that no Input Tax Credit (ITC) was claimed in respect of the purchase of the car since such purchase was not related to the petitioner's business. By further asserting that the petitioner was not aware of the impugned order until receipt of an urgent notice dated 23.02.2024 by post, the present writ petition was filed.

3. Learned counsel for the petitioner referred to the screen shot taken from the GST portal of the ITC claimed by the petitioner. With reference thereto, he points out that excess ITC of Rs.5,29,280.50 is available when the auto-populated GSTR 2A return is compared with the petitioner's GSTR 3B return. According to learned counsel, this establishes that the petitioner did not avail of ITC in respect of the purchase of the BMW car.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the petitioner is engaged in the business of trading in home appliances. Consequently, he submits that ITC would have accrued from the purchase of goods in relation to the petitioner's business. He also points out that it cannot be ascertained from the document at page no.26 of the typed set that the petitioner had not availed of ITC in respect of the purchase of the BMW car.

5. The record shows that the petitioner did not reply to the show cause notice or participate in proceedings culminating in the impugned order. As a consequence, the petitioner was unable to contend and establish that no ITC was availed of in respect of the purchase of the BMW car. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand. Since the petitioner did not have a reasonable opportunity to contest the tax demand, the interest of justice warrants providing the petitioner with such opportunity, albeit by putting the petitioner on terms.

6. For reasons set out above, the impugned order is quashed and the matter is remanded to the respondent for reconsideration subject to the

condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of 15 days 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 thereof 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 a period of two months from the date of receipt of the petitioner's reply.

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

28.03.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

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