



WEB COPY



W.P.No.8930 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P.No.8930 of 2024

&

WMP Nos.9953 & 9954 of 2024

M.Kandasamy
Legal heir of Late Mr.Kandappagounder Muthu,
No.3/151 A4, Kakapalaiyam Main Road,
Perumakkavandanpatti,
Salem-637 502.

... Petitioner

VS

The Deputy State Tax Officer-2,
Thiruchengode (Town) Circle
Namakkal, Tamil Nadu.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records pertaining to the impugned order dated 30.12.2023 with the reference GSTN:33AEHPM6268D2ZI/2017*18 on the file of the Respondent and quash the same as arbitrary, without jurisdiction, void, violative



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of the principles of natural justice, and in contravention of Articles 14, 19(1)(g) and 21 of the Constitution of India.

For Petitioner : Mr.S.Ramamurthy
For Respondent : Mr.V.Prashanth Kiran
Government Advocate (Taxes)

ORDER

An assessment order dated 30.12.2023 is challenged in this writ petition.

2. The petitioner is the son of the late Kandappagounder Muthu, who was a registered person under applicable GST enactments. He was engaged in the business of buying and selling processed turmeric. Proceedings were initiated against him in respect of assessment period 2017-18. The show cause notice issued in relation thereto on 20.11.2023 was replied to by the petitioner because his father had expired by then. Eventually, the impugned order dated 30.12.2023 was issued.



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3. Learned counsel for the petitioner assailed the order on multiple grounds. His first contention was that the respondent is not entitled to invoke Section 74 of applicable GST enactments since the ingredients thereof are not made out. His second contention was that the petitioner's father dealt in processed turmeric and the said goods are non-perishable in nature. Consequently, he submitted that the petitioner's father had purchased the goods in assessment period 2017-18, but did not sell the goods during the relevant assessment period. Hence, he filed nil returns as regards outward supply for the said assessment period. By referring to the impugned order, learned counsel pointed out that the respondent proceeded on the basis that the relevant goods should have been sold within a maximum period of 18 months from the date of purchase. By calculating the said 18 month period, learned counsel pointed out that the respondent proceeded on the assumption that there was a deemed sale in



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February 2019, and calculated the tax liability on such basis. By also referring to the show cause notice, learned counsel pointed out that there was no indication therein that the assessment would be made by assuming a deemed sale 18 months from the date of purchase of the relevant goods. Learned counsel also contended that the petitioner was not provided a personal hearing before the order was passed. The last contention of learned counsel was that a sale in February 2019 would fall within the assessment period 2018-19 and not 2017-18.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondents. As regards the contention relating to Section 74 being invoked, learned counsel submits that the petitioner's father had filed nil returns with regard to outward supply for 2017-18. By taking into account the purchases made in 2017-18, he submits that there was reasonable basis to proceed on suppression of sales. He also submits that the petitioner failed to



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produce the books of account to provide evidence of the closing stock as on 31.03.2018. If such document had been produced, he submits that the petitioner would have been able to substantiate the contention that no sales took place in 2017-18.

5. The show cause notice proceeds on the basis that the purchase value in 2017-18 was Rs.1,13,86,912/-. After noticing that nil returns were filed as regards outward supplies in the assessment period, the total value of purchases was treated as suppressed sales and the petitioner's father was called upon to show cause as to why tax should not be imposed on that basis. On the contrary, the impugned order proceeds on the assumption that processed turmeric is required to be sold within a maximum period of 18 months. By deeming that the sale took place in February 2019, the tax liability was computed. No basis is discernible from the impugned order as to why such assumptions were made. As correctly contended by learned counsel for the petitioner, the petitioner was also not put on



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notice regarding such deemed sale so as to enable the petitioner to show cause in respect thereof. It is also noticeable that no personal hearing was offered to the petitioner in violation of the statutory prescription in sub-section 4 of Section 75 of applicable GST enactments. For all these reasons, the impugned order is unsustainable.

6. Therefore, the impugned order dated 30.12.2023 is set aside and the matter is remanded to the respondent for reconsideration. The petitioner is permitted to place additional documents before the respondent within four weeks from the date of receipt of a copy of this order. Upon receipt thereof, 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 additional documents from the petitioner. All contentions are left open to the petitioner in course of remanded proceedings.



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WEB COPY 7. W.P.No.8930 of 2024 is disposed of on the above terms.

Consequently, connected miscellaneous petitions are also closed.

03.04.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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WEB COPY To

The Deputy State Tax Officer-2,
Thiruchengode (Town) Circle
Namakkal, Tamil Nadu.



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SENTHILKUMAR RAMAMOORTHY J.

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