IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 27.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.8500 of 2024
and W.M.P.Nos.9449 & 9451 of 2024

Kandhasamy Jothimani,
No.6, Karunanithi Nagar,
Sedar Street, Kurunjipadi,
Cuddalore 607 302. ... Petitioner

-vs-

The Commercial Tax Officer,
Cuddalore (Taluk),
Cuddalore. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on the files of the impugned order of the respondent in GSTIN: 33AJTPJ3455E2Z5 dated 16.09.2023 bearing a Ref.No. ZD330923105433P for the tax period April, 2018 to March, 2019 and quash the same.

For Petitioner : Mr.S.Rajasekar

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

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ORDER

An assessment order dated 13.09.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand.

2. The petitioner is a contractor and a registered person under applicable GST enactments. Upon scrutiny of the returns filed by the petitioner, a show cause notice was issued on 04.05.2023. The petitioner asserts that he had engaged the services of an auditor for handling GST compliances and that such auditor did not inform him about the receipt of such show cause notice. It is also stated that the petitioner's auditor was suffering from cancer. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner submits that a substantial part of the confirmed demand pertains to belated filing of returns and the denial of Input Tax Credit under sub-section (4) of Section 16 of applicable GST enactments. He further submits that the petitioner has a strong case on merits and seeks an opportunity to contest the tax demand. On instructions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that the petitioner was provided a reasonable opportunity to contest the tax demand since the impugned order was preceded by an intimation, a show cause notice and multiple reminders.

5. In the affidavit, the petitioner asserts that the auditor who was handling GST compliances was diagnosed with cancer and did

not keep the petitioner informed about proceedings culminating in the impugned order. On perusal of the impugned order, it appears that three issues were dealt with therein. Of these, a substantial portion of the claim relates to belated filing of returns and the consequential denial of Input Tax Credit. Since such order was issued without the petitioner being heard, albeit by putting the petitioner on terms, interference is necessary.

6. Therefore, the impugned order is quashed subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within ***two weeks*** from the date of receipt of a copy of this order. Within such period, the petitioner is also permitted to submit a reply to the show cause notice. Upon receipt of the petitioner's 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.8500 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9449 and 9451 of 2024 are closed.

27.03.2024

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

To

The Commercial Tax Officer,
Cuddalore (Taluk),
Cuddalore.

SENTHILKUMAR RAMAMOORTHY,J

rna

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