



WEB COPY



W.P.No.8849 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

**W.P.No.8849 of 2024**  
**and W.M.P.Nos.9845 & 9846 of 2024**

K.C.Mathaiyan

... Petitioner

-VS-

Assistant Commissioner (ST)  
Ayyoithiyapattinam Assessment Circle,  
Salem.

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the entire records relating to the order in Reference No. ZD330423092605G dated 20.04.2023 passed by the Respondent and quash the same.

For Petitioner : Mr.T.Ramesh

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

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## ORDER

An assessment order dated 19.04.2023 is challenged in this writ petition. The petitioner states that he is a works contractor executing civil work for government departments and local authorities. He states that a show cause notice was issued in February 2023 in relation to the discrepancy between the GSTR 1 statement and the GSTR 3B returns. Upon receipt thereof, he remitted a sum of Rs.3,00,000/- on 12.04.2023 towards tax liability. By asserting that the delay in reconciling the discrepancy was on account of delayed receipt of payments from the government departments and that penalty was imposed at 100% of the tax dues, the present writ petition was filed.

2. Learned counsel for the petitioner referred to Form GST DRC-03 under which the payment of Rs.3,00,000/- was made. In



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particular, he pointed out that such payment was made even before the impugned order was issued. He further submits that the payment was not taken into consideration and given credit to while issuing the impugned order.

3. In addition, he submits that the imposition of 100% penalty by invoking Section 74 of the Tamil Nadu Goods and Services Tax Act, 2017 was not warranted in the facts and circumstances. On instructions, he submits that the petitioner is ready and willing to remit a sum of Rs.3,00,000/- as a condition for remand.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. By referring to the impugned order, he submits that such order was preceded by an intimation, show cause notice and personal hearing notice. Since the petitioner did not participate in proceedings and contest the tax demand, he submits that no case is made out for interference.



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5. On perusal of the impugned order, it is evident that the tax liability was arrived at by noticing the discrepancy between the GSTR 7 and 1 returns, on the one hand, and the GSTR 3B returns on the other. Penalty has been imposed at 100% of the tax dues by invoking Section 74. It is also noticeable that the petitioner remitted a sum of Rs.3,00,000/- on 12.04.2023, which is prior to the date of issuance of the impugned order. This sum represents about 10% of the total tax dues. The petitioner has agreed to remit a further sum of Rs.3,00,000/-, which would aggregate to about 20% of the tax dues. In the overall facts and circumstances, since the petitioner was not heard before the impugned order was issued, the interest of justice warrants the provision of an opportunity to the petitioner.

6. For reasons set out above, the impugned order dated 19.04.2023 is set aside subject to the condition that the petitioner remits an additional sum of Rs.3,00,000/- towards the tax demand



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within *three weeks* 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 of the petitioner's reply and on being satisfied that an additional sum of Rs.3,00,000/- 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 receipt of the petitioner's reply.

7. W.P.No.8849 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9845 and 9846 of 2024 are closed.

**03.04.2024**

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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**SENTHILKUMAR RAMAMOORTHY,J**

rna

**To**

Assistant Commissioner (ST)  
Ayyoithiyapattinam Assessment Circle,  
Salem.

**W.P.No.8849 of 2024**  
**and W.M.P.Nos.9845 & 9846 of 2024**

**03.04.2024**