IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 04.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.9067 of 2024
and
W.M.P.Nos.10077 & 10079 of 2024

Aristo Telemedia Pvt. Ltd.
Represented by its Authorized Signatory
Mr.D.Ravi,
No.103, First Street, Bazullah Road,
T.Nagar, Chennai-600 017. ... Petitioner

-vs-

The Assistant Commissioner (ST)
Pallavaram Assessment Circle,
Room No.305, Integrated Commercial Taxes
Building, Salem. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 30.12.2023 with the reference GSTIN/33AAECC9319H1ZP/2019-20 in the files of the Respondent, quashing the same, and further directing the Respondent to de novo adjudicate the matter adhering to the principles of natural justice.

For Petitioner : Mr.S.Ramamurthy

For Respondent : Mrs.K.Vasanthamala
Government Advocate (Taxes)

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ORDER

An assessment order dated 30.12.2023 is the subject of challenge in this writ petition.

2. The petitioner received a show cause notice dated 30.05.2023 in relation to a demand for a sum of Rs.39,34,549/- towards tax and reversal of input tax credit. The said show cause notice was replied to on 12.08.2023. Eventually, the impugned order dated 30.12.2023 was issued.

3. Learned counsel for the petitioner challenged the impugned order on multiple grounds. The first ground of challenge was that the total demand under the show cause notice was for a sum of Rs.39,34,549/-, whereas the tax liability imposed under the impugned order is Rs.1,08,47,012/-. The next contention was that this discrepancy has arisen largely on account of imposing tax on "other expenses" by taking the figure from the profit and loss account of the petitioner. In this connection, learned counsel also pointed out that the total expenses indicated in the profit and loss account is Rs.48,53,977/- and the respondent treated this as the amount of tax to be paid instead of computing tax at the applicable rate on the above sum. The third contention was that no personal hearing was offered before the impugned order was issued.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice on behalf of the respondent. After obtaining instructions with regard to the show cause notice, she confirms that the notice called

upon the petitioner to show cause as to why the tax demand of Rs.39,34,549/- should not be confirmed.

5. On comparing the show cause notice with the impugned order, it is clear that the confirmed tax liability of Rs.1,08,47,012/- under the impugned order exceeds the amount specified in the show cause notice substantially. As a consequence, the petitioner was deprived of an opportunity to show cause against the amount eventually confirmed as the petitioner's liability. It is also noticeable from the impugned order that it was concluded therein that tax of Rs.48,53,977/- is payable by the petitioner towards other expenses. This sum of Rs.48,53,977/- appears to be the total amount indicated in Note 19 of the profit and loss account of the petitioner for the year ended 31.03.2020. Even if tax liability is imposable with regard to 'other expenses', the said amount cannot be treated as the tax liability of the petitioner. It also appears that no personal hearing was provided to the petitioner. For all these reasons, the impugned order

cannot be sustained.

6. Therefore, the impugned order dated 30.12.2023 is set aside and the matter is remanded for reconsideration. 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 a copy of this order. All contentions are left open to the petitioner in course of remanded proceedings.

7. W.P.No.9067 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.10077 and 10079 of 2024 are closed.

04.04.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

The Assistant Commissioner (ST)
Pallavaram Assessment Circle,
Room No.305, Integrated Commercial Taxes
Building, Salem.

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