IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9060 of 2024
and
W.M.P.Nos.10068 & 10069 of 2024

S M J Marble & Granite,
A proprietary concern,
Mr. S. Mariya Arul Daniel – Proprietor,
No.3, Avadi Poonamalle High Road,
Paruthipattu, Avadi,
Chennai – 6000 071. ... Petitioner

Versus

The Assistant Commissioner (ST),
Avadi Assessment Circle,
Integrated Commercial Taxes Building
(Thiruvallur Division), First Floor,
Room No.124, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ... 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 file of the respondent in impugned order GSTIN:33AHZPM9401F1Z2/Audit-1/2017-18 dated 28.12.2023 passed for the Tax period 2017-18 and quash the same as illegal, arbitrary and violative of principles of natural justice.

For Petitioner	:	Mr. B. Sivaraman, for Mr. N. Sivaprakash
For Respondent	:	Mr. C. Harsha Raj, Additional Government Pleader (Tax)

ORDER

An order dated 28.12.2023 is challenged on the ground that principles of natural justice were breached.

2. The petitioner is a dealer of marbles, granites and related materials. Pursuant to an audit and issuance of an audit report dated 23.09.2023, a show cause notice was issued to the petitioner on 27.09.2023. By asserting that the petitioner had appointed an auditor to handle GST compliances and such auditor had not informed the petitioner about the initiation of proceeding, it is stated that the petitioner did not reply to the show cause notice. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner submits that the petitioner was not heard before the impugned order was issued. Therefore, he makes a

request that an opportunity may be provided. 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.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondent. He submits that the petitioner was provided multiple opportunities to respond to the audit observations and to the show cause notice.

5. On examining documents on record, it is evident that the petitioner did not participate in proceedings culminating in the impugned order. Such non-participation was on account of the petitioner's negligence in responding to notices received. Since the petitioner did not contest the tax demand on merits, it is just and appropriate to provide the petitioner an opportunity to do so by putting the petitioner on terms.

6. Solely for the reasons set out above, the impugned order dated 2812.2023 is set aside and the matter is remanded to the respondent for reconsideration subject to the condition that the petitioner remits 10% of

the disputed tax demand within two months 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 upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide an 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.9060 of 2024 is disposed of with the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

02.04.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: Yes

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To

The Assistant Commissioner (ST),
Avadi Assessment Circle,
Integrated Commercial Taxes Building (Thiruvallur Division), First Floor,
Room No.124, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

SENTHILKUMAR RAMAMOORTHY,J

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