WEB COPY



# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

**THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.9553 of 2024 and**
**W.M.P.Nos.10573 & 10574 of 2024**

D.D.Enterprises, Represented by
Mr.Duraisamy Viswanathan Proprietor,
No.1/19, Gokulam street,
Kamarajar salai,
Periya Mathur,
Chennai-600 068. ...Petitioner

Vs.

The Deputy State Tax Officer II,
Manali Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai-03. ... Respondent

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records from the file of the respondent in the impugned assessment order in GSTIN:33AGOPV5358E2ZZ/2020-2021 dated 25.09.2023 and impugned summary order in Form DRC-07 in Reference

WEB COPY



No.ZD3309231752492 dated 25.09.2023 and quash the same as illegal, *void ab initio* and violative of principles of natural justice.

For Petitioner : Mr.B.Sivaraman

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

**ORDER**

An order dated 25.09.2023 is assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand.

2. The petitioner is a wholesale trader of bitumen. The petitioner asserts that he was not aware of the intimation dated 19.07.2023 or the impugned order dated 25.09.2023 since the same were uploaded on the "View Additional Notices and Orders" tab on the GST portal and not communicated to the petitioner by any other mode.

3. Learned counsel for the petitioner submits that the tax demand relates to the alleged discrepancy between the petitioner's GSTR 3B

WEB COPY



return and the auto-populated GSTR 2A. He further submits that the petitioner did not receive a show cause notice prior to the impugned order. On instructions, he submits that the petitioner is willing 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. By referring to the impugned order, he points out that a show cause notice dated 11.11.2022 was issued to the petitioner and that three personal hearing notices were issued.

5. On examining the impugned order, it is evident that the tax demand pertains to the difference between the input tax credit availed of as per the petitioner's GSTR 3B returns and that reflected in the auto-populated GSTR 2A. The operative portion of the impugned order records that the tax proposal is confirmed because the petitioner did not reply to the show cause notice or appear at the personal hearing. Since the petitioner was not heard before the order was issued, albeit by putting the petitioner on terms, it is just and necessary to provide the petitioner with an opportunity of hearing.

WEB COPY



6. For reasons set out above, the impugned order dated 25.09.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two 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 dated 11.11.2022 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 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. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**08.04.2024**

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

kj

WEB COPY



**SENTHILKUMAR RAMAMOORTHY,J.**

Kj

To

The Deputy State Tax Officer II,
Manali Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai-03.

W.P.No.9553 of 2024 and
W.M.P.Nos.10573 & 10574 of 2024

08.04.2024