IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9339 of 2024 and
W.M.P.Nos.10355, 10359 & 10361 of 2024

Ravi Chitra
Proprietor of M/s.Wintech Diamonds Products,
No.1/25, 1st main road,
Perumbakkam, Chennai-600 100. ...Petitioner

Vs.

1.The Assistant Commissioner (ST),
Medavakkam Assessment Circle,
Integrated Registration and
Commercial Taxes Buildings,
Nandanam, Guindy,
Chennai-35.

2.The Bank Manager,
HDFC Bank,
27, New MGR Main Road,
Kandanchavadi, Perungudi,
Chennai-600 096. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in impugned proceeding in GSTIN/33AIEPC8852CIZN/2018-2019 dated 30.08.2023 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.B.Manoharan

For R1 : Mr.V.Prashanth Kiran,
Government Advocate (T)

ORDER

An order dated 30.08.2023 is assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. In respect of the tax period 2018-2019, the petitioner received a show cause notice dated 06.06.2022 alleging that the petitioner had wrongly availed of Input Tax Credit (ITC). Such show cause notice was replied to on 03.04.2023 by contending that the transaction was genuine. In support of such statement, the petitioner annexed the original tax invoices, bank statement, ledger account and relevant returns of the supplier and the petitioner. The impugned order was issued thereafter on 30.08.2023.

3. Learned counsel for the petitioner submits that the petitioner was unaware of the issuance of the impugned order because GST compliances were being taken care of by her tax consultant. It is further stated that such order came to the notice of the petitioner only upon receipt of an order of attachment dated 18.03.2024 in relation to the bank account of the petitioner.

4. Learned counsel for the petitioner seeks another opportunity for the petitioner to place all relevant documents on record and contest the tax claim on merits. On instructions, he submits that the petitioner agrees to remit 20% of the disputed tax demand as a condition for remand.

5. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the 1st respondent. By drawing reference to the impugned order, learned counsel points out that three reminders for personal hearing were issued to the petitioner. He also submits that all the three dates of personal hearing were subsequent to the petitioner's reply dated 03.04.2023. As regards the petitioner's reply, he submits that the petitioner did not submit any documents to establish actual movement of goods.

6. On perusal of the petitioner's reply, it appears that the petitioner submitted original tax invoices, the ledger account pertaining to the supplier concerned, bank statement and relevant GSTR returns. The petitioner does not appear to have submitted e-way bills, lorry receipts, weighment slips and the like to establish actual movement of goods. On examining the impugned order, it appears that the tax proposal was confirmed largely on the ground that there was no proof of actual movement of goods. By taking into account the nature of documents submitted by the petitioner, which include the bank statement showing payments made to the supplier, the GSTR 2A indicating the availability of ITC, it is just and appropriate that the petitioner be provided an opportunity to produce relevant documents to prove actual movement of goods. As a condition for remand, however, it is also necessary to put the petitioner on terms.

7. In the facts and circumstances outlined above, the impugned order dated 30.08.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 20% 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 additional documents within the aforesaid period to establish actual movement of goods. Upon receipt of additional documents from the petitioner and on being satisfied that 20% of the disputed tax demand was received, the 1st 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 additional documents from the petitioner. As a consequence of the impugned order being set aside, the order of attachment is raised.

8. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

08.04.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

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