IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.9695 & 9702 of 2024 and
W.M.P.Nos.10718, 10720, 10727 & 10732 of 2024

In both WPs.

Tvl. Sri Thangamalai Murugan Agencies,
Represented by its Proprietor,
Mr.Ganesan Shanmugam,
No.6D, SIDCO, Thangamapuri Pattinam,
Mettur Dam, Salem-636 402. ...Petitioner

Vs.

1. The Assistant Commissioner (ST),
Mettur Assessment Circle,
Mettur-636 402.

2. The Assistant Commissioner (ST)(FAC),
Mettur Assessment Circle,
Mettur-636 403.

3.Vijaya Bank,
PN Patti, Salem Main Road,
Karumalaikoodal,
Mettur Dam, Tamil Nadu.

4.The Central Board of Indirect Taxes & Customs,
North Block, New Delhi-110 001. ... Respondents

Prayer in W.P.No.9695 of 2024: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in order passed by the 1st respondent vide Impugned order No.ZD330923058532D dated 11.09.2023 and seeking to quash of the same as arbitrary along with the consequential DRC-07 order under Section 73, Ref.No.ZD330923058532D dated 11.09.2023 issued by the 1st respondent, and further direct the 2nd respondent to drop the proceedings initiated in No.33BKQPS3883J1ZE/2024/A3 dated 06.03.2024.

Prayer in W.P.No.9702 of 2024: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in communication vide ROC.No.33BKQPS3883J1ZE/2024/A3 dated 06.03.2024 issued by the 2nd respondent to the 3rd respondent ordering freeze of the petitioner's Bank Account No.302306041000002 or any other account associated with the following PAN No.BKQPS3883J and seeking to quash the same as arbitrary and further direct the 2nd respondent to order de-freeze of the petitioner's account.

In both WPs.

For Petitioner : Mr.M.N.Bharathi

For R1 & R2 : Mrs.K.Vasanthamala, Govt. Adv.(T)

For R4 : Mr.Ramesh Kutty, Sr. Standing Counsel

COMMON ORDER

In these two writ petitions, an assessment order dated 11.09.2023 and the consequential bank attachment notice dated 06.03.2024 are assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. The petitioner asserts that he was unaware of proceedings culminating in the orders impugned herein because the notice and orders were uploaded on the “View Additional Notices and Orders” tab on the GST portal.

3. Learned counsel for the petitioner submits that the petitioner could not contest the proceedings because he was unaware of the issuance of the show cause notice or the order until the same was informed to him upon recovery proceedings being initiated. On instructions, he submits that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for respondents 1 & 2. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice for the 4th respondent. By referring to the orders impugned herein, Mrs.K.Vasanthamala submits that the petitioner was provided sufficient opportunity to contest the tax demand by issuing both an intimation and a show cause notice.

5. The orders impugned herein reveal that tax liability was imposed on the basis of a mismatch between the GSTR 1 and GSTR 3B. These orders were issued without the petitioner being heard. In these circumstances, albeit by putting the petitioner on terms, it is just and appropriate that the petitioner be provided a reasonable opportunity to contest the tax demand.

6. Therefore, the impugned assessment order and the consequential attachment notice are set aside and the matter is remanded for reconsideration subject to the 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. Within the aforesaid period, the petitioner is also permitted to submit a reply to the show cause notice.

Upon receipt of the petitioner's reply and upon being satisfied that the 10% of the disputed tax demand was received, the assessing officer 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. On account of the assessment order being set aside, the bank attachment is raised.

7. These writ petitions are disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

12.04.2024

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

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To

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Mettur Assessment Circle,
Mettur-636 402.

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SENTHILKUMAR RAMAMOORTHY,J.

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