IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9657 of 2024 and
W.M.P.Nos.10688 & 10801 of 2024

Narie Constructions Private Limited,
Represented by its Authorised Signatory,
Mr.Peter Rayappan,
Plot No.304, Door No.9,
Gajendran salai,
Thiruverkadu Co-operative Nagar,
Chennai-600 077. ...Petitioner

Vs.

The State Tax Officer,
Avadi Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai North Division,
Chennai-600 003. ... 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 impugned assessment order in Reference No.ZD3307230852521 dated 20.07.2023 and impugned summary order in Form DRC-07 dated 20.07.2023 passed for financial year 2017-2018 and quash the same as illegal, arbitrary, without jurisdiction and violative of principles of natural justice.

For Petitioner : Mr.B.Sivaraman

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader (T)

ORDER

An assessment order dated 20.07.2023 is assailed on the ground of breach of principles of natural justice.

2. The petitioner asserts that a show cause notice dated 19.05.2023 was uploaded on the “View Additional Notices and Orders” tab on the GST portal and not served on the petitioner through any other mode. Therefore, the petitioner further asserts that it was unaware of proceedings culminating in the impugned order.

3. Learned counsel for the petitioner referred to an earlier order of this Court in *Sakthi Steel Trading v. The Assistant Commissioner (ST), W.P.No.4122 of 2022, order dated 29.01.2024*, to contend that it is incumbent on the GST authorities to serve notice through any of the other modes specified in Section 169 of applicable GST enactments, if the tax payer fails to respond to the first notice. He also submits that only one opportunity of personal hearing was granted although the statute prescribes that three opportunities be provided. On instructions, he submits that the petitioner is willing to remit 10% of the disputed tax

demand as a condition for remand.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the impugned order was issued after providing an opportunity to the petitioner to show cause by notice dated 19.05.2023 and after providing an opportunity of personal hearing under reminder dated 13.06.2023.

5. Section 169 of applicable GST enactments provides for service of notice through any of the modes specified therein. The record shows that the impugned order was preceded by a show cause notice dated 19.05.2023 and reminder for a personal hearing. On perusal of the impugned order, it is evident that the confirmed tax demand pertains to the availment of Input Tax Credit (ITC) in respect of the purchase of a car. On account of the petitioner not being heard, the petitioner was not in a position to endeavor to persuade the respondent that the purchase of the car was in course of business. For that limited reason, the impugned order calls for interference by putting the petitioner on terms.

6. Therefore, the impugned order dated 20.07.2023 is set aside and

the matter is remanded for reconsideration subject to the petitioner remitting 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 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 a period of two months from the date of receipt of the petitioner's reply.

7. The writ petition is 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

The State Tax Officer,
Avadi Assessment Circle,
No.32, Elephant Gate Bridge Road,
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SENTHILKUMAR RAMAMOORTHY,J.

Kj

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