IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.9903 of 2024
and W.M.P.Nos.10912 & 10915 of 2024

Tvl.Aditya Automobiles
Rep. by its Proprietor
Sanjay Kumar Pareek,
No.51/23, Thandavarayan Gramani Street,
Chennai 600 081. ... Petitioner

-vs-

The Assistant Commissioner (State Tax)
Tondiarpet Assessment Circle,
Integrated Building for Commercial Taxes Department,
No.32, Elephant Gate Bridge Road,
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 of the respondent in GSTIN No: 33AVXPP6065G1Z0/2017-18 dated 08.12.2023, and quash the same as illegal and arbitrary.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mrs.K.Vasanthamala, GA (T)

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ORDER

An Order-in-Original dated 08.12.2023 is the subject of challenge in this writ petition. The petitioner received notice in Form ASMT 10 dated 08.06.2023 alleging discrepancy between the petitioner's GSTR 3B and GSTR 1 returns. The petitioner replied thereto on 05.07.2023 stating that there is no difference and that the petitioner had paid excess tax under the GSTR 3B. This was followed by a show cause notice dated 26.08.2023 and the impugned order dated 08.12.2023. The petitioner asserts that he was unable to reply to the show cause notice or participate in proceedings because such notice and order were only uploaded on the "view additional notices and order" tab of the GST portal, and not communicated to the petitioner through any other mode.

2. Learned counsel for the petitioner invited my attention to the reply in Form GST ASMT 11. He also points out that the petitioner submitted a documents to establish that the petitioner is not liable in respect of the alleged discrepancy. On instructions, he submits that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She draws my attention to the impugned order and points out that such order was preceded by an intimation and show cause notice. She also points out that two personal hearing opportunities were provided to the petitioner.

4. The documents on record disclose that the petitioner replied to the notice in Form GST ASMT 10, but failed to respond to the intimation and show cause notice that followed. As is evident from the impugned order, tax liability was confirmed because the petitioner did not reply to the show cause notice. It is also noticeable

that the petitioner's reply to the notice in Form GST ASMT 10 was not taken into consideration. In these circumstances, albeit by putting the petitioner on terms, it is just and appropriate that the petitioner be provided an opportunity.

5. For reasons set out above, impugned order dated 08.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand within ***two weeks*** from the date of receipt of a copy of this order. Within the said 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 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.

6. W.P.No.9903 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.10912 and 10915 of 2024 are closed.

17.04.2024

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

To

The Assistant Commissioner (State Tax)
Tondiarpet Assessment Circle,
Integrated Building for Commercial Taxes Department,
No.32, Elephant Gate Bridge Road,
Chennai 600 003.

SENTHILKUMAR RAMAMOORTHY,J

rna

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