IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9813 of 2024 and
W.M.P.Nos.10840 & 10841 of 2024

Mr.T.Gopinathan,
Propritor-M/s.Geetha Enterprises,
No.38, VOC street,
Sri Devi Nagar,
Kamaraj Nagar,
Avadi, Chennai-600 071. ...Petitioner

Vs.

The State Tax Officer,
Avadi Assessment Circle,
Avadi, 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 in connection with the impugned order GSTIN:33BOWPG3553B1Z2/2017-2018 dated 26.12.2023 issued by the respondent and quash the same.

For Petitioner : Mr.I.Calvin Jones

For Respondent : Mrs.K.Vasanthamala,
Government Advocate (T)

O R D E R

An order dated 26.12.2023 is assailed on the ground that a reasonable opportunity was not provided to the petitioner.

2. The petitioner states that he was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and had undertaken civil construction work for the Avadi Municipal Corporation. Upon receipt of a show cause notice dated 11.08.2023, the petitioner replied on 10.10.2023 stating that the tax liability is equivalent to the VAT TDS and on account of deduction, no further amounts are payable. The impugned order was issued in these facts and circumstances on 26.12.2023.

3. Learned counsel for the petitioner submits that the petitioner's reply was not taken into consideration and that no personal hearing was offered.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that the impugned order indicates that several opportunities were provided to the petitioner. She further submits that the tax proposal was confirmed because the

petitioner failed to produce relevant documents as indicated in the impugned order.

5. The petitioner's reply is on record. By such reply, the petitioner has stated that he had opted to pay tax through the composition method. Consequently, it was stated that the tax liability and the VAT TDS are the same. On such basis, the petitioner requested that proceedings be dropped. On examining the petitioner's reply, it is evident that the petitioner did not enclose any documents to establish the assertion in such reply. In the impugned order, in the operative portion thereof, it is recorded as under:

> *"The tax payer has produced work order copy. The letter order copy is pertaining to 2014-15 financial year and clearly recorded that the product should be completed within period of 60 days. They have not produced Form T, R, TDS deducted copy, VAT return copy to verify the genuineness. Due to insufficient documents, the proposal is hereby confirmed. "*

The above extract reveals that the tax proposal was confirmed because the petitioner did not produce relevant documents, including the documents relating to deduction of TDS and the VAT return. The documents on record also disclose that proceedings against the petitioner commenced with the issuance of notice dated 03.07.2023 in Form GST ASMT 10. In these circumstances, it cannot be said that the petitioner was not provided time to respond to the tax proposal.

6. However, learned counsel for the petitioner contends that the petitioner was unable to submit these documents earlier because the petitioner is a sub-contractor and did not have the relevant documents. As a condition for remand, learned counsel for the petitioner submits that the petitioner is willing to remit 10% of the disputed tax demand.

7. In view of the fact that the tax proposal was confirmed because the petitioner did not submit documentary evidence and the petitioner seeks another opportunity to corroborate contentions raised in the reply dated 10.10.2023, it is just and appropriate that such opportunity be provided to the petitioner by putting the petitioner on terms.

8. For reasons set out above, the impugned order dated 26.12.2023 is 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 maximum period of four weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit documents in support of the defence raised by the petitioner within the aforesaid period. Upon receipt thereof 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 documents from the petitioner.

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

15.04.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

The State Tax Officer,
Avadi Assessment Circle,
Avadi, Chennai-600 003.

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