IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9769 of 2024 and
W.M.P.Nos.10802 & 10803 of 2024

M/s. Silver & C.Z. International,
Represented by its Proprietor Mr.Ganesh Agarwal,
26/Old.37/1, Hanumantharayan Koil Streets,
Park Town, Chennai,
Tamil Nadu-600 003. ...Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Moore Market Assessment Circle,
Commercial Taxes Department,
Integrated Commercial Taxes Office Complex,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai-600 006. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in GSTIN:33AADPA8561H1ZZ/2017-2018 and consequential order under Section 73 and Summary of the order in Form GST DRC-07 bearing Reference No.ZD331223186150V dated 23.12.2023 and quash the same as it has been passed in gross violation of principles of natural justice and not in conformity with the principles laid by the decision of the Hon'ble Madras High Court in the case of JAK Communications vs.

The Deputy Commercial Tax Officer and Others (W.P.No.35453 of 2023 dated 19.12.2023.

For Petitioner : Mr.Rupesh Sharma

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

ORDER

An order dated 23.12.2023 is assailed on the ground of breach of principles of natural justice.

2. The petitioner is engaged in the business of trading of bullion and jewellery. The petitioner asserts that he was unaware of proceedings culminating in the impugned order because the intimation and show cause notice were uploaded on the "View Additional Notices and Orders" tab on the GST portal and not communicated to the petitioner through any other mode.

3. Learned counsel for the petitioner submits that the petitioner was denied a reasonable opportunity to contest the tax demand on merits. He further submits that the petitioner paid taxes not only on the advance but also thereafter on the invoices. As a result, he submits that excess tax was paid. If provided an opportunity, he submits that the petitioner would be in a position to explain the mismatch which form the basis of the

confirmed tax demand.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the show cause notice and impugned order were communicated to the petitioner not only by uploading the same on the GST portal but also through e-mail. Therefore, he contends that no case is made out for interference with the impugned order.

5. On perusal of the impugned order, it is clear that the tax proposal was confirmed only because the petitioner failed to reply to the show cause notice by enclosing relevant documents. Therefore, it is just and appropriate that the petitioner be permitted to contest the tax demand on merits, albeit by putting the petitioner on terms.

6. On instructions, learned counsel for the petitioner submits that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.

7. For reasons set out above, the impugned order dated 23.12.2023

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 period of three 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 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.

8. 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

kj

SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

The Assistant Commissioner (ST) (FAC),
Moore Market Assessment Circle,
Commercial Taxes Department,
Integrated Commercial Taxes Office Complex,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai-600 006.

W.P.No.9769 of 2024 and
W.M.P.Nos.10802 & 10803 of 2024

15.04.2024