IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.9748 & 9755 of 2024
and W.M.P.Nos.10788 & 10790 of 2024

M/s.J.A.Motor Sport,
Represented by its Proprietor,
No.184-2 Aerodrome Road,
Singanallur, Coimbatore 641 005. ... Petitioner in both WP's

-vs-

The Assistant Commissioner (ST) (FAC)
Singanallur North Circle,
Coimbatore 641 018. ... Respondent in both WP's

PRAYER in W.P.No.9748 of 2024: 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 his proceedings in TIN: 33221822940/2019-20, quash the order dated 22.02.2024 passed therein.

PRAYER in W.P.No.9755 of 2024: 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 his proceedings in TIN: 33221822940/2021-22, quash the order dated 22.02.2024 passed therein.

For Petitioner in both WP's	:	Mr.R.L.Ramani, Sr. Adv. for Mr.B.Raveendran
For Respondent in both WP's	:	Mr.C.Harsha Raj, AGP (T)

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COMMON ORDER

Assessment orders dated 22.02.2024 in respect of two distinct assessment periods are challenged herein on the ground of denial of reasonable opportunity to contest the tax demand on merits.

2. The petitioner is engaged in the manufacture and sale of sports cars. In relation thereto, the petitioner had procured and sold high speed diesel to its holding company, Jayem Automotives Private Limited. In relation thereto, the petitioner received notice dated 31.12.2023. An extension of time was requested for on 22.01.2024. The petitioner received a notice dated 09.02.2024 fixing a personal hearing on 19.02.2024. The impugned order was issued thereafter on 22.02.2024.

3. Learned senior counsel for the petitioner referred to the notice dated 09.02.2024 and pointed out that the petitioner was granted time to reply along with documentary evidence on or before 19.02.2024. He also pointed out that the personal hearing was fixed on the same date, i.e. 19.02.2024. By relying on a judgment of this Court in W.P.Nos.21193 and 21195 of 2017, order dated 16.08.2017, he

contended that this Court held that the personal hearing should not be fixed on the same date as the date fixed for filing the reply because it is possible that the assessing officer may be fully convinced by the reply. Since the personal hearing was fixed on the same date as the date of submission of the reply, learned senior counsel contends that the impugned order is unsustainable.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. As regards the judgment relied upon by learned senior counsel, he contends that the principle becomes applicable only if the tax payer concerned submits a reply. In this case, he points out that the petitioner requested for extension of time both by letter dated 22.01.2024 and by letter dated 06.02.2024. He also points out that the request for extension was accepted by granting extension up to 19.02.2024 instead of 22.02.2024. Thus, he submits that the principles of natural justice were adhered to.

5. On perusal of the petitioner's letter dated 22.01.2024, it is clear that the petitioner requested for an extension of one month until 22.02.2024. By communication dated 09.02.2024, the petitioner was granted time up to 19.02.2024. Therefore, it is clear that the petitioner was given reasonable time to respond. It is also evident from the documents on record that the petitioner did not reply on merits to the show cause notice at any point of time. Therefore, the current state of affairs has arisen on account of the petitioner's failure to reply to the show cause notice within a reasonable time. At the same time, upon examining the impugned order, it is apparent that the tax demand was confirmed only on account of the fact that the petitioner did not file a reply on merits. In these circumstances, it is just and necessary to provide another opportunity to the petitioner after putting the petitioner on terms.

6. On instructions, it is submitted on behalf of the petitioner that the petitioner agrees to remit 25% of the disputed tax demand as a condition for remand.

7. In these circumstances, the orders impugned herein are set aside subject to the condition that the petitioner remits 25% of the disputed tax demand in respect of each assessment period as agreed to within a period of ***three 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 on merits within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 25% of the disputed tax demand was received in respect of each assessment period, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders within ***two months*** from the date of

receipt of the petitioner's reply.

8. W.P.Nos.9748 and 9755 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.10788 and 10790 of 2024 are closed.

15.04.2024

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

To

The Assistant Commissioner (ST) (FAC)
Singanallur North Circle,
Coimbatore 641 018.

SENTHILKUMAR RAMAMOORTHY,J

rna

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