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W.P.No.9960 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9960 of 2024 and
W.M.P.Nos.10982 & 10983 of 2024

M/s.Bajrang & Bajrang,
II-Floor, No.76, Godown street,
Chennai-600 001,
Represented by its Proprietor,
Roop Kishore Kalantri.

...Petitioner

Vs.

The State Tax Officer (FAC),
Kothaval Chavadi Assessment Circle,
Integrated Commercial Taxes,
Department Building,
Room No.313, No.32,
Elephant Gate, Vepery,
Chennai-600 003.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order of the respondent in GSTIN/33AAKPK7164M1ZA/AUDIT-1/2017-2018, dated 29.12.2023 and quash the same and consequently, direct the respondent to grant time



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to the petitioner to file reply and also to produce documents to prove their claim.

For Petitioner : Mr.A.Ilaya Perumal
For Respondent : Mr.V.Prashanth Kiran,
Government Advocate (T)

ORDER

The petitioner assails an order dated 29.12.2023 on the ground that a reasonable opportunity was not provided to contest the tax demand on merits.

2. The petitioner asserts that he is about 78 years old and was suffering from various illnesses. Consequently, it is stated that he was unable to respond to the show cause notice or participate in proceedings culminating in the order impugned herein.

3. Learned counsel for the petitioner submits that the petitioner would be in a position to respond to each of the five defects dealt with in the impugned order if provided an opportunity. He further submits that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.



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4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. By referring to the impugned order, he points out that an audit of the petitioner's books of account was conducted and that the intimation and show cause notice was subsequent to the issuance of the audit report to the petitioner. In these circumstances, he contends that sufficient opportunity was provided to the petitioner.

5. On perusal of the impugned order, it is evident that an audit was conducted and that an audit report dated 15.09.2023 was issued. It is also clear that an intimation and show cause notice preceded the impugned order. In these circumstances, the petitioner cannot be absolved of responsibility as a registered person to monitor the GST portal. At the same time, it is noticeable that the tax proposal was confirmed because the petitioner did not submit a reply along with supporting documents. Therefore, albeit by putting the petitioner on terms, the interest of justice demands that the petitioner be provided an opportunity.

6. Therefore, the impugned order dated 29.12.2023 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



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a maximum 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 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. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

16.04.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

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