IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10569 of 2024 and
W.M.P.Nos.11597 & 11600 of 2024

M/s.Sri Sai Prabu and Co.,
Represented by partner
Mr.Soorisetty Subrahmanyam,
Nos.5 & 6, Audiyappa Naicken street,
Chennai, Tamil Nadu-600 001. ...Petitioner

Vs.

Assisstant Commissioner (ST),
Kothawalchavadi Assessment Circle,
Intergrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
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 leading to the issuance of proceedings with order in original No.ZD3310230251355 Form DRC-07 dated 06.10.2023, by the respondent herein and quash the same, and direct the respondent herein to consider the ITC involved in mismatch in GST number by the supplier invoices, with a direction that the *bona fide* error and subsequently which is to consider and reassess the case after giving full and fair opportunity to the petitioner.

For Petitioner : Mr.Prakash TC

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

ORDER

An order in original dated 06.10.2023 is challenged in this writ petition primarily on the ground of breach of principles of natural justice.

2. The petitioner asserts that he was unaware of the intimation and show cause notice preceding the impugned order because the same was uploaded on the GST portal but not communicated to the petitioner through any other mode. The petitioner further asserts that he became aware of such proceedings only upon being informed of the attachment of his bank account by the branch manager on 20.03.2024.

3. Learned counsel for the petitioner submits that the petitioner is a trader engaged in the business of selling and purchasing dry fruits and spices. Since the petitioner was not conversant with the use of

computers, it is stated that the petitioner was unaware of proceedings culminating in the impugned order. 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.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the intimation was issued in June 2023 and that the show cause notice was issued in July 2023. He also points out that a personal hearing was offered to the petitioner on 31.07.2023, but the petitioner failed to avail of these opportunities.

5. In the affidavit in support of the petition, it is asserted that the petitioner was unaware of proceedings until the branch manager of the Central Bank of India informed the petitioner on 20.03.2024. On perusal of the impugned order, it appears that the tax liability pertains to the mismatch between the petitioner's GSTR 3B return and the auto-populated GSTR 2A. In the circumstances outlined above, albeit by putting the petitioner on terms, it is just and appropriate to provide an opportunity to the petitioner to contest the tax demand on merits.

6. Solely for reasons set out above, the impugned order dated 06.10.2023 is set aside subject to the petitioner remitting 10% of the disputed tax demand as agreed to within a period of two 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 within the aforesaid period. 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 three months from the date of receipt of the petitioner's reply.

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

22.04.2024

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

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To

Assisstant Commissioner (ST),
Kothawalchavadi Assessment Circle,
Intergrated Commercial Taxes Building,
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SENTHILKUMAR RAMAMOORTHY,J.

Kj

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