IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10581 of 2024 and
W.M.P.Nos.11613 & 11614 of 2024

Tvl. Sri Bhavani Automobiles,
Represented by its Proprietor Mr.Suresh,
No.70/3, 2nd floor,
TKM Road, Vallam Post,
Thiruporur X Road,
Chengalpattu District-603 003. ...Petitioner

Vs.

The State Tax Officer (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab nagar,
Thirukazhukundram-603 109. ... 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 in Form GST DRC-07 bearing reference GSTIN No.33BBEPS1177A2ZO/2017-2018 and ZD331123168327K dated 27.11.2023 of the respondent and quash the same and further direct the respondent to pass a fresh speaking order after providing an opportunity of personal hearing and for production of supporting documents.

For Petitioner : Mr.R.Anishkumar

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader (T)

ORDER

An order dated 27.11.2023 is challenged primarily on the ground of breach of principles of natural justice. The petitioner asserts that he was unaware of the show cause notice dated 22.06.2023 and the impugned order because the same was not communicated through any other mode other than being uploaded on the portal.

2. Learned counsel for the petitioner referred to show cause notice dated 22.06.2023 and submitted that the impugned order was issued within six months from the date of the show cause notice. Learned counsel contends that this violates sub-section (2) of Section 74 of applicable GST enactments. In addition, learned counsel points out that the petitioner paid excess amounts as is evident from the screenshot of the petitioner's portal at page no.41 of the typed set of papers. On instructions, he submits that the petitioner is ready and willing to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He points out that principles of natural justice were complied with by issuing intimation dated 22.05.2023, show cause notice dated 22.06.2023 and a personal hearing notice dated 01.11.2023.

4. On perusal of the impugned order, it is evident that the tax proposal confirmed therein pertains to the discrepancy between the petitioner's GSTR 3B and 1 returns for financial year 2017-2018. Learned counsel for the petitioner points out that additional tax was remitted to the extent of Rs.6,75,073.10 as per the screenshot at page no.41 of the typed set of papers. This aspect warrants verification by the respondent. Nonetheless, since the impugned order was issued without the petitioner being heard, reconsideration on terms is necessary in the interest of justice.

5. Solely for reasons set out above, the impugned order dated 27.11.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 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.

6. 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

The State Tax Officer (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab nagar,
Thirukazhukundram-603 109.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

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