IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.11268 of 2024
and W.M.P.Nos.12360 & 12361 of 2024

Tvl. B.L. Collection,
Represented by its Proprietor
Bhanwarlal Bisani,
New No.45, Old No.17, First floor,
Godown Street, Chennai-600 001. ... Petitioner

-vs-

1.The Deputy Commercial Tax Officer,
Kothawalchavadi North I,
Chennai North,
Integrated Commercial Taxes Office Complex,
Room No.313, 3rd floor, Vepery,
Chennai-600 003.

2.The Assistant Commissioner (ST),
Kothawalchavadi Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai-600 003.

3.The Branch Manager,
City Union Bank Limited,
Old No.154, New No.319,
Thambu Chetty Street,
George Town, Chennai-600 001. ... Respondents

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 1st Respondent in TN-GST/ 33AADPB9486E1ZU/ 2018-2019 dated 01.09.2023 along with order and summary of order in Reference No. ZD330923000687E dated 01.09.2023 and consequential impugned proceedings of the 2nd Respondent in RC No. 33AADPB9486E1ZU /2024 dated 05.03.2024 along with Form GST DRC-13 dated 05.03.2024 issued by the 1st Respondent to the 3rd Respondent and quash the same and consequentially direct the 1st respondent to entertain the records, documents and reply from the Petitioner and then pass order after affording a personal hearing to the Petitioner.

For Petitioner : Mr.M.Hariharan

For RR1 & 2 : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order in original dated 01.09.2023 and proceedings consequent thereto are challenged in this writ petition.

2. The petitioner is engaged in the business of buying and selling

cloth and apparel. By asserting that the petitioner was unable to respond to the show cause notice or participate in proceedings due to the petitioner being diagnosed with cancer in 2021, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the tax proposal pertains to the discrepancy between the petitioner's GSTR 3B returns and the auto-populated GSTR 2A. If provided an opportunity, he submits that such discrepancy would be explained by the petitioner. He points out that the petitioner could not participate because he was seriously ill during the relevant period.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for respondents 1 & 2. She points out that notice in Form ASMT 10 was issued to the petitioner in May 2023 and that this was followed by a show cause notice dated 30.06.2023 and personal hearing notice dated 01.08.2023.

5. On examining the impugned order, it is evident that the tax

proposal was confirmed on the ground that the petitioner did not respond to the show cause notice or attend the personal hearing. Upon consideration of the averments in the affidavit and the submissions of learned counsel, the interest of justice warrants that the petitioner be provided an opportunity by putting the petitioner on terms. Learned counsel submits, on instructions, that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

6. Therefore, the impugned order dated 01.09.2023 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, respondents 1 & 2 are directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply. Since the order in original

was set aside, the bank attachment is raised.

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

29.04.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J

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