IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.11010 of 2024
and W.M.P.Nos.12092 & 12093 of 2024

Baisany Ramiah Chetty Pandurangan ... Petitioner

-vs-

Assistant Commissioner (ST)(FAC)
Loansquare Assessment Circle
No.32, Integrated Commercial Taxes Office Complex
Elephant Gate Bridge Road
Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in Order in Reference No.: ZD3312231242713 passed under Section 73 of the TNGST Act, 2017 for the period 2017-2018 dated 18.12.2023 and quash the same as illegal and not in accordance with law and consequently direct the Respondent to conduct fresh assessment proceedings after providing a reasonable opportunity of hearing to the petitioner in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.C.Harsha Raj, AGP (T)

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ORDER

An order dated 18.12.2023 is challenged in this writ petition primarily on the ground that the petitioner was not provided a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that he is engaged in the business of providing goods transport services. Consequently, it is stated that the services provided by the petitioner fall within the scope of the reverse charge mechanism. Upon receipt of notice in Form GST ASMT 10 dated 03.07.2023, the petitioner replied on 12.09.2023 by uploading such reply on the portal on 19.09.2023. The impugned order was issued thereafter on 18.12.2023.

2. Learned counsel for the petitioner referred to the notice dated

03.07.2023 and pointed out that the petitioner responded to such notice by stating that the difference between the petitioner's GSTR 3B and Form 26AS is a result of the petitioner providing services that are charged to GST on reverse charge basis. By referring to the impugned order, learned counsel points out that the respondent did not call for the documents referred to in paragraph 11 of the impugned order. If such documents had been called for, he submits that the petitioner would have submitted the same. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. By referring to the affidavit of the petitioner, he submits that the case of the petitioner is that he could not avail of the personal hearing since he was suffering from viral fever. On the merits, he submits that the petitioner was under the obligation to establish that the services provided by him fall within

the reverse charge mechanism by submitting all necessary documents in such regard.

4. On perusal of the petitioner's reply, it is evident that the only documents enclosed with such reply are the GSTR 9, GSTR 9C and income tax documents. As contended by learned Additional Government Pleader, it was incumbent on the petitioner to provide all relevant documents to establish that the services fall within the scope of Section 9(3) of applicable GST enactments read with Notification No.13/2017 - Central Tax (Rate) dated 28.06.2017. Nonetheless, in the reply, the petitioner has asserted categorically that the services provided by him fall within the scope of the above provision and notification. Learned counsel also contends that the documents establishing transport of goods, including corresponding consignment notes, are available with the petitioner. In these circumstances, it is just and necessary to provide an opportunity to the petitioner by putting the petitioner on terms.

5. For reasons set out above, impugned order dated 18.12.2023 is set aside subject to the petitioner remitting 10% of the disputed tax demand within ***two weeks*** from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is permitted to file a reply to the show cause notice along with additional documents. Upon receipt of such 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 ***three months*** from the date of additional documents from the petitioner.

6. W.P.No.11010 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.12092 and 12093 of 2024 are closed.

26.04.2024

rna
Index : No
Internet : Yes

Neutral Citation: No

To

Assistant Commissioner (ST)(FAC)
Loansquare Assessment Circle
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SENTHILKUMAR RAMAMOORTHY,J

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