IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10559 of 2024 and
W.M.P.Nos.11589 & 11591 of 2024

M/s.Navbharat Boilers,
Represented by its Partner,
Mr.Ramamirtham Haridoss,
No.433, T.H.Road, Tondiarpet,
Chennai-600 081. ...Petitioner

Vs.

Assistant Commissioner,
Tondiarpet:North-II,
Integrated Commercial Taxes Building,
Chennai North Division,
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 on the file of the respondent in order in Reference No.ZD3308230857170 passed under Section 73 of the TNGST Act, 2017 for the period 2020-2021 dated 16.08.2023 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.Raghav Rajeev Menon

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An order dated 16.08.2023 is assailed on the ground of breach of principles of natural justice.

2. The petitioner is a registered person under applicable GST enactments. The petitioner asserts that the show cause notice and impugned order were uploaded on the "View Additional Notices and Orders" tab on the GST portal. It is further stated that the petitioner was unaware of proceedings because the notice and orders were not communicated to the petitioner through any other mode.

3. Learned counsel for the petitioner submits that the petitioner was not provided a reasonable opportunity to contest the tax demand on merits. He further submits that no personal hearing was provided although there is a reference thereto in the impugned order. On instructions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader,

accepts notice for the respondent. He points out that the petitioner has also filed a rectification petition dated 15.11.2023. In addition, he submits that sufficient opportunity was provided to the petitioner before issuing the impugned order.

5. On perusal of the impugned order, it is evident that the said order pertains to alleged wrongful availment of Input Tax Credit (ITC). The documents on record include the show cause notice dated 22.06.2023. From the impugned order, it appears that a personal hearing notice was issued on 17.07.2023. The impugned order further discloses that the tax demand was confirmed because the petitioner failed to respond to the show cause notice or participate in the personal hearing. In these circumstances, albeit by putting the petitioner on terms, it is just and necessary to provide the petitioner with an opportunity to contest the tax demand on merits.

6. Solely for this reason, the impugned order dated 16.08.2023 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 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.

23.04.2024

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

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To

Assistant Commissioner,
Tondiarpet:North-II,
Integrated Commercial Taxes Building,
Chennai North Division,
Chennai-600 003.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

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