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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10744 of 2024
and
W.M.P.Nos.11826, 11829 & 11831 of 2024

M/s. Sri Uma Plastics,
Represented by its Proprietor,
Chithiraipazham Nadar Vetrivel,
I.A, Mambazhapattu Road,
Athithanar Nagar,
Villupuram – 605 602. ... Petitioner

Versus

1.The Deputy State Tax Officer-2,
Office of the Deputy Commissioner (ST),
Integrated Commercial Taxes Building,
Collector's Master Plan Campus,
Villupuram – I.

2.The Assistant Commissioner(ST),
Office of the Deputy Commissioner (ST),
Integrated Commercial Taxes Building,
Collector's Master Plan Campus,
Villupuram – I.

3.The Branch Manager,
Tamil Nadu Mercantile Bank Ltd.,
Old No.15, New No.45, Ground Floor,
Kanya Kulam Road,
Villupuram – 605 602. ... Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the impugned proceedings of the 1st respondent dated 11.10.2023 and the summary of order in Form GST DRC-07 dated 12.10.2023 in Reference No.ZD331023063656L and quash the same as passed contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017 and against the principles of natural justice.

For Petitioner : Mr. P. Rajkumar

For Respondents : Mrs. K. Vasanthamala, (for R1 & R2)
Government Advocate (Tax).

ORDER

An order in original dated 11.10.2023 is challenged on the ground that the petitioner did not have reasonable opportunity to contest the tax demand.

2. The petitioner is engaged in the business of purchase and sale of plastic scrap. According to the petitioner, a commercial vehicle was purchased for business purposes and Input Tax Credit (*ITC)* was availed in respect thereof. By asserting that the petitioner was unaware of proceedings culminating in the impugned order, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the total tax

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demand is a sum of Rs.4,28,936/-. Upon attachment of the petitioner's bank account, he submits that a sum of Rs.2 lakhs was appropriated therefrom and that this amount represents almost 50% of the disputed tax demand.

4. Mrs. K. Vasanthamala, learned Government Advocate (Tax), accepts notice on behalf of the first and second respondents. She points out that the impugned order was preceded by notice in Form GST ASTM-10, an intimation dated 05.05.2023 and show cause notice dated 06.06.2023.

5. On perusal of the impugned order, it is evident that the tax proposal pertains to wrongful availment of ITC in respect of purchase of a motor vehicle. Learned counsel for the petitioner contends that such purchase was for business purposes and ITC was not wrongly availed. The documents on record evidence that a sum of Rs.2 lakhs was appropriated towards the total tax liability of about Rs.4.28 lakhs. In these circumstances, it is just and necessary to provide an opportunity to the petitioner to contest the disputed tax demand on merits.

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6. For reasons set out above, the impugned order dated 11.10.2023 is set aside and the matter is remanded for reconsideration. The petitioner is also permitted to submit a reply to the show cause notice within two weeks from the date of receipt of a copy of this order. Upon receipt of the petitioner's reply, the first 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 receipt of petitioner's reply.

7. For the avoidance of doubt, it is made clear that the sum of Rs.2,00,000/- (Rupees two lakhs only), which was appropriated from the petitioner's bank account, shall abide by the outcome of the remanded proceedings.

8. In view of the assessment order being set aside, the bank attachment is raised.

9. W.P.No.10744 of 2024 is disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are also closed.

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Index : No
Speaking Order : Yes
Neutral Case Citation : Yes

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