IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10736 of 2024
and
W.M.P.Nos.11816 & 11820 of 2024

M/s. Sebon Creations,
Represented by its Partner,
Mr. K. Gopalsamy,
485/2, Chinnapa Layout,
New Ramakrishnapuram Main Road,
Tirupur – 641 607. ... Petitioner

Versus

The Assistant Commissioner (ST),
Kongu Nagar Circle,
Tirupur. ... Respondent

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 respondent in GSTIN 33ADOFS3080P1ZG/2019-2020 dated 20.10.2023, the order under Section 74 dated 20.10.2023 and the summary of the order in DRC-07 dated 20.10.2023 issued in Reference No ZD331023128294V and quash the impugned orders 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 Respondent : Mr. T.N.C. Kaushik,
Additional Government Pleader.

ORDER

An order in original dated 20.10.2023 is challenged on the ground that the petitioner was not provided a reasonable opportunity to contest the tax demand on merits.

2.The petitioner is engaged in the business of trading in readymade garments. The petitioner asserts that he was unaware of proceedings culminating in the impugned order since the notices and order were uploaded on the GST portal but not communicated to the petitioner through any other mode.

3. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to the discrepancy between the petitioner's GSTR-3B returns, on the one hand, and the GSTR-1 statement and auto-populated GSTR-2A, on the other. He points out that the petitioner did not avail of Input Tax Credit (*ITC)* in relation to the purchase of granites since such purchase pertained to the construction carried out by the petitioner for

non-business purposes. If provided an opportunity, he submits that the petitioner would be able to explain the discrepancy. On instructions, learned counsel for the petitioner submits that the petitioner is willing 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 on behalf of the respondent. By referring to the impugned order, he points out that such order was preceded by intimation dated 11.09.2023, show cause notice dated 21.07.2023 and a personal hearing notice.

5. On perusal of the impugned order, it appears that the confirmed tax proposal pertains to wrongful availment of ITC. It is also evident that the tax proposal was confirmed because the petitioner did not reply to the show cause notice or attend the personal hearing. In these circumstances, the interest of justice warrants that an opportunity be provided to the petitioner after putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 20.10.2023

is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand within 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 to the show cause notice 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 receipt of the petitioner's reply.

7. W.P.No.10736 of 2024 is disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are also closed.

23.04.2024

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

To

The Assistant Commissioner (ST),
Kongu Nagar Circle,
Tirupur.

SENTHILKUMAR RAMAMOORTHY,J.

klt

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