IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10723 of 2024 and
W.M.P.Nos.11805 & 11806 of 2024

Tvl. Parasuraman Enterprises,
Represented by its Proprietor,
No.27, Lingapaiyanpettai Perumbedu,
Ponneri, Thiruvallur,
Tamil Nadu-601 204. ...Petitioner

Vs.

Deputy State Tax Officer-1,
Ponneri Assessment Circle,
Integrated Commercial Taxes Office Complex,
D.No.32, Room no.107,
Elephant Gate Bridge Road,
Chennai-600 003. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent's order dated 25.09.2023 in GSTIN 33BNLPP5956M1Z8/2022-2023 and quash the same.

For Petitioner : Mr.G.Derrick Sam
for Mr.Adithya Reddy

For Respondent : Mr.V.Prashanth Kiran, Govt. Adv. (T)

ORDER

An order in original dated 25.09.2023 is assailed on the ground of denial of reasonable opportunity to the petitioner.

2. The petitioner asserts that he is engaged in the business of dealing in construction material. In relation to such business, he states that he purchased a tipper lorry. He asserts that he was unaware of proceedings culminating in the impugned order because the notice and order were uploaded on the "View Additional Notices and Orders" tab on the GST portal.

3. Learned counsel for the petitioner submits that commercial vehicles, which are used in the course of business, do not fall within the scope of sub-section (5) of Section 17 of applicable GST enactments. He draws reference to the tax invoice for the purchase of the tipper lorry to substantiate the contention. If provided an opportunity, he submits that the petitioner would be in a position to establish that he is entitled to Input Tax Credit (ITC) in respect of such purchase. On instructions, he submits that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. By referring to the impugned order, he points out that such order was preceded not only by a show cause notice but by a personal hearing notice dated 13.09.2023.

5. The petitioner has asserted that he is engaged in the business of dealing in construction material and that the tipper lorry was purchased in relation to such business. The relevant tax invoice has been placed on record. In these facts and circumstances, it is just and necessary to provide an opportunity to the petitioner to contest the tax demand on merits by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 25.09.2023 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, 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. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

24.04.2024

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

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To

Deputy State Tax Officer-1,
Ponneri Assessment Circle,
Integrated Commercial Taxes Office Complex,
D.No.32, Room no.107,
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SENTHILKUMAR RAMAMOORTHY,J.

Kj

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