IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10728 of 2024 and
W.M.P.Nos.11807 & 11808 of 2024

Tvl. Devi,
Lakshmi Amman Koil Street,
Thadaperumbakkam,
Ponneri-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 04.08.2023 in GSTIN 33EVRPD5496M1ZS/2021-2022 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 04.08.2023 is assailed on the ground of denial of reasonable opportunity to the petitioner.

2. The petitioner asserts that she is engaged in the business of dealing in construction material. Upon receipt of show cause notice dated 24.06.2023, the petitioner replied on 25.07.2023 by stating that a commercial vehicle was purchased.

3. Learned counsel for the petitioner submits that the tipper lorry was purchased in furtherance of business and that such commercial vehicle does not fall within the scope of sub-section (5) of Section 17 of applicable GST enactments. He also points out that the petitioner's reply to the show cause notice was disregarded while recording conclusions in the impugned order. By placing reliance on the invoice, he seeks an opportunity to persuade the respondent that the petitioner was entitled to ITC in respect of such purchase.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. Since the petitioner replied to the show cause

notice without providing any supporting documents, he contends that the petitioner is not deserving of a further opportunity. He points out that this case is distinguishable in as much as the petitioner cannot claim that he was unaware of proceedings.

5. The petitioner's reply is on record and reads as follows:

"Commercial vehicle lorry purchased furtherance of business"

From the copy of the reply on record, it appears that no documents were uploaded while filing such reply. Therefore, the petitioner undoubtedly failed to substantiate the contention that the purchase was in furtherance of business and outside the scope of sub-section (5) of Section 17 of applicable GST enactments. Nonetheless, the relevant invoice has been placed on record now and the petitioner has asserted that the purchase was in furtherance of business because the petitioner is a dealer in construction material. The interest of justice warrants the provision of an opportunity to the petitioner in these facts and circumstances.

6. Therefore, the impugned order dated 04.08.2023 is set aside 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 any additional documents within the aforesaid period. Upon receipt of such documents 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 additional documents from the petitioner.

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,
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SENTHILKUMAR RAMAMOORTHY,J.

Kj

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