IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11103 of 2024 and
W.M.P.Nos.12185 & 12186 of 2024

Silambuchelvi,
Proprietrix of Shree Sivaa Pharmacy,
Ground floor, 61, Sathy main road,
Athipalayam pirivu,
Ganapathy, Coimbatore,
Tamil Nadu-641 006. ...Petitioner

Vs.

The Commercial Tax Officer, (ST) (FAC),
Avarampalayam Assessment Circle,
Coimbatore-III, Tamil Nadu. .. 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 impugned assessment order in ZD330723130399C dated 29.07.2023 issued under Section 73 of the CGST/TNGST Act, 2017, and uploaded along with summary of order in DRC-07 for tax period 2018-19 under Section 73 of the CGST/TNGST Act, 2017 from the files of the respondent herein and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondents : Mr.C.Harsha Raj, Addl. Govt. Pleader(T)

O R D E R

An assessment order dated 29.07.2023 is challenged in this writ petition on the ground of breach of principles of natural justice.

2. The petitioner asserts that she was unaware of proceedings culminating in the impugned assessment order since the intimation, notice and impugned order were uploaded on the "View Additional Notices and Orders" tab on the GST portal, but not communicated to the petitioner through any other mode. The present writ petition was filed in the said facts and circumstances.

3. Learned counsel for the petitioner referred to the show cause notice and pointed out that such show cause notice was issued under Section 73 of applicable GST enactments, whereas penalty at 100% is specified therein. In contrast, she submits that the impugned order makes reference both to Sections 73 & 74. When a notice is issued under Section 73, learned counsel submits that 100% penalty cannot be imposed. Without prejudice, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for

remand.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He submits that the petitioner was provided sufficient opportunity to contest the tax demand by issuing an intimation in February 2023, a show cause notice on 26.02.2023 and three reminders thereafter. He also points out that the amounts were correctly mentioned even in the show cause notice.

5. On comparing the show cause notice and the impugned order, it is evident that the show cause notice was issued under Section 73 although 100% penalty is mentioned therein. In the summary of the impugned order, reference is made to Section 73, whereas the detailed order also makes reference to Section 74. As a registered person, the petitioner was under an obligation to monitor the GST portal on an ongoing basis and failed to do so. However, in view of the above observations, the impugned order calls for interference, albeit by putting the petitioner on terms.

6. For reasons aforesaid, the impugned order dated 29.07.2023 is

set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand 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. All contentions are left open to the petitioner in course of such remanded proceedings.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

26.04.2024

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

The Commercial Tax Officer, (ST) (FAC),
Avarampalayam Assessment Circle,
Coimbatore-III, Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

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