IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11643 of 2024
and
W.M.P. Nos.12733 & 12734 of 2024

M/s. Sidhivinayak Marketing,
Rep.by its Proprietor ... Petitioner

Versus

The Deputy Commercial Tax Officer,
Kothawalchavadi : North-1: Chennai North,
No.32, Elephant Gate Bridge Road,
Room No.313, 3rd Floor,
Integrated Commercial Taxes Building,
Chennai – 600 003. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records of the respondent in Order dated 01.11.2023 in GSTIN 33AUJPJ0354M1ZL/ 2018-19 and quash the same as illegal, arbitrary and in violation of principle of natural justice.

For Petitioner : Ms. C. Rekha Kumari

For Respondent : Mr. V. Prashanth Kiran,
Government Advocate (Tax)

ORDER

An order dated 01.11.2023 is challenged in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax proposal.

2. The petitioner states that he is engaged in buying and selling domestic appliances. According to the petitioner, one of the suppliers, Proficient Technologies, issued invoices in November 2018 and thereafter cancelled the same by issuing credit notes in respect thereto. By further asserting that the petitioner did not avail of Input Tax Credit (*ITC)* in respect of those invoices, the present writ petition was filed.

3. Learned counsel for the petitioner refers to the petitioner's GSTR-3B returns to contend that ITC was not availed of in respect of invoices issued by Proficient Technologies. She further submits that the show cause notice was not responded to because the petitioner was unaware of proceedings since such show cause notice was uploaded on the GST portal in the "View Additional Notices and Orders" tab, but not communicated to

the petitioner through any other mode. The petitioner agrees 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. He points out that sufficient opportunity was provided to the petitioner by issuing both a notice in Form ASMT-10 and a show cause notice. He also submits that a personal hearing was offered to the petitioner.

5. On perusal of the impugned order, it is evident that the tax proposal arose out of a scrutiny of the GSTR-2A and upon noticing issuance of credit notes by Proficient Technologies. The petitioner has placed on record the GSTR-3B returns for the relevant month to establish that the petitioner did not avail of ITC in respect of purchases from Proficient Technologies. In these circumstances, reconsideration is necessary by putting the petitioner on terms.

6. Therefore, the impugned order dated 01.11.2023 is set aside and the matter is remanded to the respondent 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. Within the aforesaid period, the petitioner is permitted to submit a reply to the show cause notice. Upon receipt thereof, 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.11643 of 2024 is disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.04.2024

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

klt

To

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SENTHILKUMAR RAMAMOORTHY,J.

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