IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11381 of 2024
and
W.M.P.Nos. 12470 & 12471 of 2024

M/s.Kamal Deep Agencies,
Rep.by its Proprietor
Mr. Devichand Gauthamchand ... Petitioner

Versus

The Assistant Commissioner,
Nungambakkam Assessment Circle,
No.88, 2nd Floor, Taluk Office Building,
Mayor Ramanthan Salai.
Chetpet, Chennai – 600 031. ... 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 33AAEPG6957A1Z2 dated 26.12.2023 relating to the assessment year 2017-2018 and the summary of the order passed in GST DRC-07 dated 26.12.2023 issued in Reference No.ZD3312232015151 and quash the same as passed contrary to the provisions of the CGST/TNGST Act, 2017 and also in violation of principles of natural justice.

For Petitioner : Mr. P. Rajkumar

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

ORDER

An order in original dated 26.12.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. The petitioner states that he is a dealer in milk products. He further submits that the petitioner purchased these products from entities such as Aavin, Heritage Foods Ltd, etc. By further asserting that the petitioner had engaged the services of a tax consultant and that such consultant did not inform him about the proceedings culminating in the impugned order, the present writ petition was filed.

3. Learned counsel for the petitioner referred to the impugned order and pointed out that the tax proposal pertained to the difference between the purchase value as per the auto-populated GSTR-2A and the turnover as reported in the GSTR-3B return. Out of the difference amount of Rs.29,34,922.08/-, learned counsel submits that by certificate dated 12.04.2024 Aavin admitted that the value of supply to the petitioner was Rs.17,16,079/-, and that a sum of Rs.27,48,088/- was wrongly reported in the supplier's return. If such amount were to be deducted, learned counsel submits that the difference would be only about Rs.1.86 lakhs. On instructions, he submits that 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 on behalf of the respondent. He points out that the impugned order was preceded by show cause notice dated 20.09.2023 and two personal hearing notices. He also points out that the certificate from Aavin was obtained much after the impugned order was issued.

5. On perusal of the impugned order, it is evident that the tax proposal pertained to the disparity between the petitioner's GSTR-3B return and the sales value reported in the supplier's GSTR-1 statement. On examining Aavin's certificate dated 12.04.2024, it appears *prima facie* that Aavin erroneously reported an additional amount of Rs.27,48,088/-. These facts and circumstances justify remanding the matter for reconsideration albeit by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 26.12.2023 is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within three 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 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 two months from the date of

receipt of the petitioner's reply.

7. W.P.No.11381 of is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

29.04.2024

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

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To

The Assistant Commissioner,
Nungambakkam Assessment Circle,
No.88, 2nd Floor, Taluk Office Building,
Mayor Ramanthan Salai.
Chetpet, Chennai – 600 031.

SENTHILKUMAR RAMAMOORTHY,J.

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