IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11360 of 2024
and
W.M.P.Nos. 12461 & 12462 of 2024

M/s.Luv Kush Agency,
Rep.by its Proprietor
Sri, Vaishnsingh Durgsingh ... Petitioner

Versus

The State Tax Officer,
Inspection – III,
Intelligence, Salem. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, call for the records of the respondent herein in GSTIN 33AKOPD3187H1Z4/ 2017-18 and quash the proceeding dated 08.11.2023 passed therein.

For Petitioner : Mr. B. Raveendran

For Respondent : Mr. C. Harsha Raj,
Additional Government Pleader (Tax)

ORDER

An order in original dated 08.11.2023 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 was a registered person under application GST enactments, but such registration was cancelled on 07.02.2023. Consequently, he asserts that the petitioner was unaware of proceedings culminating in the impugned order.

3. Learned counsel for the petitioner referred to the impugned order dated 08.11.2023 and pointed out that the petitioner had reported a total turnover of Rs.18,49,509/- in his returns. He further submitted that the tax proposal pertained to the disparity between total turnover as per the profit and loss account and the reported turnover. In this connection, he points out that the total turnover, as reported in the profit and loss account, includes the pre-GST period between 01.04.2017 and 30.06.2017. On instructions, 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 on behalf of the respondent. Apart from submitting that the petitioner was provided sufficient opportunity to contest the tax demand on merits, he further submitted that the burden of proof is on the petitioner to establish that the turnover for the period between April 2017 and June 2017 was reported under VAT regime and that applicable taxes were paid.

5. On perusal of the impugned order, it is evident that the tax proposal was on the basis of disparity between the total turnover as per the profit and loss account and as per the returns of the petitioner. Since such turnover relates to financial year 2017-18, the submission that a part of the turnover pertained to the pre-GST period cannot be disregarded. In these circumstances, the interest of justice warrants that an opportunity be provided to the petitioner albeit by putting the petitioner on terms.

6. Therefore, the impugned order dated 08.11.2023 is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand within two weeks from the date of receipt of a copy of this order. Within the said 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.11360 of 2024 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
klt

To

The State Tax Officer,
Inspection – III,
Intelligence, Salem.

SENTHILKUMAR RAMAMOORTHY,J.

klt

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