



WEB COPY



W.P.No.12380 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.12380 of 2024
and W.M.P.Nos.13497 & 13498 of 2024

C.Ekambaram

... Petitioner

-VS-

The Assistant Commissioner of GST & Central Excise,
Annanagar Division, Chennai North Commissionerate,
2054, 12th Main Road, Newry Tower,
Annanagar, Chennai – 600 040.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in original No.58/2022 dated 26.10.2022 of the respondent and quash the same and further direct the respondent to pass a fresh order after considering the submission of the petitioner together with an opportunity of personal hearing.



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WEB COPY For Petitioner : Mr.R.Anish Kumar

For Respondent : Mr.K.Mohanamurali, Sr. SC

ORDER

An order in original dated 26.10.2022 is challenged on the ground of breach of principles of natural justice. The petitioner asserts that he is a painting contractor. While he was an Income Tax assessee, he was not registered for service tax purposes. Upon purchasing a house on 07.11.2013, the petitioner shifted from the old premises at No.20/38, Privari Road, Anna Nagar, Chennai 40 to the new premises at No.226, Fort Street, Nehru Nagar, 13th Main Road, Anna Nagar, Chennai 40. As a consequence, the petitioner asserts that he did not receive either the show cause notice or the impugned order until the recovery notice was received by him in July 2023 at the new address. The present writ petition was filed in these facts and circumstances.



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2. By referring to the impugned order, learned counsel points out that it is recorded therein that the notice for personal hearing was returned by the postal authority with the remark “no such person in the address”. On merits, learned counsel submits that the proposal pertains to labour charges which were paid by the petitioner to persons engaged in painting work. Therefore, learned counsel seeks an opportunity to contest the tax demand on merits. On instructions, he agrees to remit a sum of Rs.50,000/- as a condition for remand.

3. Mr.K.Mohanamurali, learned senior standing counsel, accepts notice for the respondents. He points out that even the income tax return of the petitioner for assessment year 2017-18 contains the old address to which the notices were sent. He also points out that the impugned order were issued in October 2022 and that revenue interest should be protected.



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4. As contended by learned counsel for the petitioner, the impugned order records expressly that the personal hearing notice was returned with the endorsement “no such person in the address”. The petitioner has placed on record the sale deed for purchase of a house on 07.11.2023. Upon such purchase, the petitioner asserts that he shifted to such address. In these facts and circumstances, it is just and necessary that an opportunity be provided to the petitioner to contest the tax demand on merits, albeit by putting the petitioner on terms.

5. For reasons set out above, the impugned order dated 26.10.2022 is set aside subject to the condition that the petitioner remits a sum of Rs.50,000/- towards the tax demand within a maximum period of *three weeks* from the date of receipt of a copy of this order. The respondent is directed to serve a copy of the show cause notice on the petitioner within *one week* from the date of receipt of a copy of this order. Upon receipt thereof, the petitioner is



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permitted to reply within *two weeks* from the date of receipt of the show cause notice. Upon receipt of the petitioner's reply, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of *three months* from the date of receipt of the petitioner's reply.

6. W.P.No.12380 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.13497 and 13498 of 2024 are closed.

07.06.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

The Assistant Commissioner of GST & Central Excise,
Annanagar Division, Chennai North Commissionerate,
2054, 12th Main Road, Newry Tower,
Annanagar, Chennai – 600 040.



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SENTHILKUMAR RAMAMOORTHY,J

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