IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11982 of 2024
and
W.M.P.Nos.13073 and 13074 of 2024

Tvl. Dharieneesh Housing Developers,
GSTIN/ID: 33AAFHFD5901G2ZS
Represented by Managing Partner, M.Magudeshwaran,
No.6-1, The Central Park, Opposite KMCH Hospital, Sulur,
Coimbatore – 641 402.

... Petitioner

Versus

The State Tax Officer,
Trichy Road Assessment Circle,
Commercial Tax Building, Dr.Balasundaram Road,
Coimbatore – 641 018.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for records pertaining to the impugned order in Form GST DRC-07 bearing reference number ZD3311231769765/2019-20 dated 28.11.2023, issued by the respondent and quash the same.

For Petitioner	:	Mr. G. Derrick Sam
For Respondent	:	Mrs. K. Vasanthamala, Government Advocate (Tax)

ORDER

An order in original dated 28.11.2023 is assailed on the ground of denial of reasonable opportunity to the petitioner to contest the tax demand on merits.

2. By asserting that the petitioner was unaware of the proceedings culminating in the impugned order because the notices and the impugned order were uploaded in the "View Additional Notices and Orders" tab on the GST portal, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to a mismatch between the GSTR-3B and the auto-populated GSTR-2A. If provided an opportunity, learned counsel submits that the petitioner would be in a position to establish that Input Tax Credit (*ITC)* was validly availed of. On instructions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mrs. K. Vasanthamala, learned Government Advocate, accepts notice on behalf of the respondent. By referring to the impugned order,

learned counsel points out that such order was preceded by an intimation dated 13.07.2022, a show cause notice dated 14.11.2023 and a personal hearing notice.

5. On examining the impugned order, it is evident that the tax proposal was confirmed because the petitioner did not reply to the show cause notice or attend the personal hearing. It is also clear that the tax proposal pertains to the mismatch between the returns filed by the petitioner and the auto-populated GSTR-2A.

6. Learned counsel for the petitioner contends that the necessary documents are available to establish that the petitioner did not avail of ineligible ITC. In these circumstances, the interest of justice warrants, the provision of an opportunity to the petitioner to contest the tax demand on merits, albeit by putting the petitioner on terms.

7. For reasons set out above, the impugned order dated 28.11.2023 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.

8. The writ petition is disposed of with the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

04.06.2024

Index : No
Speaking
Neutral Case Citation :No

klt

To

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SENTHILKUMAR RAMAMOORTHY,J

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