IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.12020 of 2024 and
W.M.P.Nos.13113 & 13115 of 2024

Tvl. Sri Muthaiya Poly Packs,
Represented by its Proprietor,
84, Mariyamman Kovil Street,
Pallapatty, Salem-636 009. ... Petitioner

-vs-

Assistant Commissioner (ST) (FAC),
Arisipalayam Assessment Circle,
4th floor, Commercial Taxes Office,
Pitchards Road, Hasthampatty,
Salem-636 007. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the entire records relating to the order in GSTIN No.33CADPM0545H1Z1/2018-2019 dated 26.10.2023 passed by the respondent and quash the same.

For Petitioner : Mr.T.Ramesh

For Respondent : Mrs.K.Vasanthamala, Government Advocate (T)

ORDER

An order in original dated 26.10.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. By asserting that the petitioner was not provided a reasonable opportunity before issuing the impugned order, learned counsel for the petitioner submits that the tax proposal pertains to a mismatch between the GSTR 3B returns of the petitioner and the GSTR 1 statement. In this connection, he submits that such mismatch occurred because the GSTR 1 statement was submitted on quarterly basis whereas the GSTR 3B returns were submitted on monthly basis. He also submits that if computed properly, the amounts tally. Hence, he submits that revenue interest has not been affected. He seeks another opportunity to contest the tax demand on merits.

2. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that the impugned order was preceded by an intimation dated 28.06.2023 and the show cause notice

dated 25.09.2023. Since the petitioner did not respond thereto, she submits that the tax proposal was confirmed.

3. On perusal of the impugned order, it is evident that the tax proposal was confirmed because the petitioner did not reply to the show cause notice and did not appear at the personal hearing granted on 04.10.2023. Learned counsel for the petitioner submits that the disparity between the GSTR 3B returns and the GSTR 1 statement can be explained if an opportunity is provided to the petitioner. On instructions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand. In these circumstances, it is just and necessary to provide an opportunity to the petitioner.

4. For reasons set out above, the impugned order dated 26.10.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within

the aforesaid period. Upon receipt of the petitioner's reply 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.

5. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

03.06.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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To

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