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W.P.Nos.12248 & 12253 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.12248 & 12253 of 2024

and

WMP.Nos.13337, 13338, 13343 &13344 of 2024

M/s. Quantum Associates,
Represented by its Partner,
Mr.H.S.Mohammed Mukrim,
8th Floor, No.1-A, 1/27, Jhaver Plaza,
Mahatma Gandhi Salai, Nungambakkam,
Chennai 600 034.

.. Petitioner in both WPs

Versus

1. The Deputy State Tax Officer,
Nungambakkam Assessment Circle,
No.88, Mayar Ramanathan Salai,
Taluk Office Bldg., 2nd Floor,
Chetpet, Chennai - 600 031.
2. The Deputy Commissioner (ST) Chennai Central - III,
No.1 Grems Road, Chennai 600 006.
3. The Branch Manager,
ICICI Bank, 8/44 East Mada Street,
Mylapore, Chennai 600 004.

.. Respondents in both WPs

Prayer in WP.No.12248 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in order passed by the respondent vide GSTIN 33AAAFQ7551N1ZY/2020-21 dated



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17.11.2023 and seeking to quash of the same as arbitrary along with the consequential DRC-07 order under Section 73, Ref No.ZD3311231036324 dated 17.11.2023 issued by the first respondent.

Prayer in WP.No.12253 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in communication vide GSTIN / 33AAAFQ7551N1ZY/2023-24 dated 14.03.2024 along with the DRC 13 dated 14.03.2024 issued by the second respondent to the third respondent ordering attachment of the petitioner's bank Account number 218605001315 or any other account associated with the following PAN number 33AAAFQ7551N and seeking quash of the same as arbitrary and further direct the second respondent to defreeze / lift the attachment of the petitioner's account.

For Petitioner : M/s. M.Narasimha Bharathi in both WPs

For R1 & R2 : Mr.V.Prashanth Kiran
Government Advocate (Taxes) in both WPs

COMMON ORDER

By these two writ petitions, an assessment order and the consequential attachment order are challenged.

2. The petitioner asserts that he was unaware of proceedings culminating in the impugned assessment order because the show cause notice and impugned order were uploaded on the “View Additional Notices and Orders” tab on the GST portal but not communicated to the petitioner through any other mode.



3. Learned counsel for the petitioner submits that the tax proposal pertained to the mismatch between the petitioner's GSTR 3B returns and the auto-populated GSTR 2A. If an opportunity is provided, learned counsel submits that the petitioner would be in a position to establish that only eligible Input Tax Credit was availed. On instructions, learned counsel for the petitioner 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 for respondents 1 and 2. He points out that the recovery notice was served on the petitioner on 27.12.2023 after issuing the impugned assessment order. He contends that the petitioner was aware of proceedings at least on 27.12.2023. He also pointed out that the impugned order was preceded by a show cause notice and sufficient opportunity was provided to the petitioner.

5. On perusal of the impugned assessment order, it is evident that the tax proposal pertained to the mismatch between the petitioner's GSTR 3B returns and the auto-populated GSTR 2A. It is also clear that the tax proposal was confirmed because the petitioner failed to reply to the show cause notice. In these circumstances, albeit by putting the petitioner on terms, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand on merits.



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6. For reasons set out above, the impugned assessment order dated 17.11.2023 is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to 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 dated 17.11.2023. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the first 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. As a consequence of the impugned assessment order being set aside, the bank attachment is raised.

7. These writ petitions are disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

04.06.2024

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

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<https://www.mhc.tn.gov.in/judis>



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To
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SENTHILKUMAR RAMAMOORTHY, J.

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