IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.13342 of 2024 and
W.M.P.Nos.14494 & 14495 of 2024

M/s.Jayanthi Plastics (Defunct),
Represented by its Proprietor
M.R.Venkatachalam,
No.27A, Vivekanandar Salai,
Nasiyanur Road,
Erode – 638 011. ... Petitioner

-vs-

The Deputy State Tax Officer-2,
Cithode Assessment Circle,
Erode. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the impugned proceedings of the respondent in order GSTIN No.33AAEFJ6768N1ZS/2018-2019 dated 23.12.2023 for the tax period year April 2018-March, 2019 along with the consequential order in Form GST DRC-07 bearing Reft No.ZD331223186260S dated 23.12.2023.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order dated 23.12.2023 is assailed on the ground that the petitioner was not provided a reasonable opportunity to contest the tax demand on merits.

2. The petitioner asserts that he received show cause notice dated 28.07.2022 and that his request for adjournment was not responded to. Instead, it is submitted that the impugned order was issued without further notice.

3. Learned counsel for the petitioner submits that the tax proposal pertains to the mismatch between the GSTR 1 statement and the GSTR 3B returns. She further submits that notice in Form ASMT 10 should have been issued if there is discrepancy in the returns of the petitioner. Without complying with the mandate of Section 61 of applicable GST statutes read with Rule 99(1), she submits that the impugned order was issued. Without

prejudice, on instructions, she 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 for the respondent. On instructions, she submits that notice in Form ASMT 10 was issued. She further submits that the petitioner replied to the show cause notice and requested for time. Since no reply was forthcoming from the petitioner, she submits that the impugned order was issued.

5. On perusal of the impugned order, it is clear that the tax proposal was confirmed because the petitioner did not reply to the show cause notice. The petitioner's reply requesting for time is on record. In these circumstances, since the impugned order was issued without the petitioner being heard, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits, albeit by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 23.12.2023 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 a period of three months from the date of receipt of the petitioner's reply.

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

10.06.2024

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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Cithode Assessment Circle,
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