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W.P.No.13458 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.13458 of 2024

and

WMP.Nos.14612 & 14614 of 2024

Ace Industrial Gases Pvt. Ltd.
Represented by its Director,
Mr.Kabilan,
Plot No.B 72, SIPCOT Industrial Complex,
Gummidipoondi, Tiruvallur - 601 201.

.. Petitioner

Versus

The Assistant Commissioner (ST)
Gummidipoondi Assessment Circle
Survey no.1275/3, Integrated Commercial Taxes Buildings,
Chennai (North) Division, Room No.112, 1st floor,
Elephant Gate Bridge Road, Chennai - 600 003.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN:33AAACA6249G1ZY / 2017-18 dated 21.11.2023 passed by the respondent herein and quash the same.

For Petitioner : M/s.Sri Harini S.P

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)



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ORDER

An assessment order dated 21.11.2023 is challenged on the ground of breach of principles of natural justice.

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 referred to the impugned order and pointed out that the tax proposal arose as a result of an inadvertent error committed by the petitioner while filling up the GSTR 3B returns in as much as amounts were erroneously filled up in the RCM column instead of 'all other ITC' column. 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.



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4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. He points out that the principles of natural justice were complied with by issuing show cause notice dated 22.09.2023 and a personal hearing notice dated 02.11.2023 and by offering a personal hearing on 08.11.2023.

5. On examining the impugned order, it is evident that the tax proposal pertained solely to the alleged wrongful availment of ITC. Learned counsel for the petitioner submitted that the petitioner availed of eligible ITC but committed an inadvertent error while filling up GSTR 3B returns. In these circumstances, it is just and necessary 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 21.11.2023 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 a period of 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 of the petitioner's reply and upon being satisfied that 10% of the



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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 assessment order within a period of three months from the date of receipt of the petitioner's reply.

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

10.06.2024

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

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To

The Assistant Commissioner (ST)
Gummidipoondi Assessment Circle
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