IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.13347 of 2024 and
W.M.P.Nos.14497 & 14509 of 2024

M/s.Kamatchi Stores,
Represented by its Proprietor,
No.160/220 Bharathi salai,
Royapettah, Chennai-600 014. ... Petitioner

-vs-

1. The State Tax Officer,
Thiruvallikeni Assessment Circle,
No.571, Room No.421, Fourth floor,
Integrated CT & R Building,
Anna salai, Nandanam, Chennai-600 035.

2. The Manager,
Canara Bank, Triplicane Branch,
No.140, Big Street,
Triplicane, Chennai-600 005. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent in his proceedings in GSTIN:33APLPK4329Q1ZD/2017-2018, quash the order dated 19.12.2023 passed therein.

For Petitioner : Mr.P.V.Sudakar
Mr.G.Subramanian

For R1 : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order dated 29.12.2023 imposing liability for cess along with penalty thereon is challenged in this writ petition on the ground of not provided a personal hearing to the petitioner. The petitioner states that the liability is limited to cess payable under the Goods and Services Tax (Compensation to States) Act, 2017. Since it was the initial period of GST implementation, the petitioner asserts that it was not aware of such liability.

2. Learned counsel for the petitioner referred to the impugned order and pointed out that a personal hearing was not provided to the petitioner merely because the petitioner did not request for a personal hearing. By further contending that requisite credit was available in the petitioner's electronic credit ledger, he seeks an opportunity of personal hearing.

3. Mrs. K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that the petitioner admits liability with regard to payment of cess. Therefore, she contends that no case is made out for interference.

4. On perusal of the impugned order, it is evident that such order was

preceded both by an intimation and a show cause notice. In reply to such show cause notice, the petitioner replied by submitting details of purchases made by him and outward supplies made by him. It is also clear from the impugned order that a personal hearing was not offered to the petitioner because the petitioner did not opt for the same. Sub-section (4) of Section 75 mandates that a personal hearing be provided if an order adverse to the tax payer is proposed to be issued. Therefore, interference is warranted but by taking into account the fact that the petitioner's liability for payment of cess, from the electronic credit ledger or otherwise, is not seriously disputed, the interest of justice warrants that the revenue interest be protected.

5. Accordingly, the impugned order dated 29.12.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 15% of the amounts payable towards cess under the impugned order 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 detailed reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 15% of the amounts payable towards cess was

received, the 1st 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. Since the assessment order has been set aside, the bank attachment is raised.

6. 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

The State Tax Officer,
Thiruvallikeni Assessment Circle,
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