IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.13538 of 2024
and
W.M.P.Nos.14695 & 14699 of 2024

M/s. VSG MOTORS,
Rep. by its Partner Mr.K.Prabju,
No.1 L, Gandhi Road,
Anupparpalayampudhur,
Tiruppur - 641 652. ... Petitioner

-vs-

1. The Assistant Commissioner (ST) (FAC),
   Anupparpalayam Assessment Circle,
   No.16, Emberor Building, Ground Floor,
   Indhira Nagar, 1st street, Tirupur - 641 603.
2. The Commercial Tax Officer,
   Office of the Anupparpalayam,
   Tiruppur - I, Tiruppur.
3. The Principal Commissioner of CGST
   & Central Excise,
   GST Bhawan, 26/1, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in its impugned proceedings made in GSTIN 33AAJFV8353N1Z1/2017-18 dated 30.12.2023 quash the same.

For Petitioner : Ms.S.Sara
for Mr.Dhanaram Ramachandran
For R1 & R2 : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)
For R3 : Mr.Ramesh Kutti
Senior Standing Counsel

ORDER

An order in original dated 30.12.2023 is challenged in this writ petition on the ground of breach of principles of natural justice.

2. The petitioner asserts that the impugned order and communications preceding such order were uploaded in the "View Additional Notices and Orders" tab on the GST portal. The petitioner further states that he appeared before the respondent on 04.12.2023 and also submitted a reply dated 29.12.2023, but the same was not taken into consideration while issuing the impugned order.

3. Learned counsel for the petitioner refers to the impugned order and points out that the references therein indicate that the intimation and show cause notice were issued on the same date. She also points out that such order is a reproduction of the show cause notice and that the petitioner's reply was not considered. Without prejudice, she submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for respondents 1 and 2. By referring to the acknowledgment, he points out that it indicates that the reply was received on 10.01.2024, which is after the order was issued.

5. The reply dated 29.12.2023 and the acknowledgment have been placed on record. As contended by learned Additional Government Pleader, the acknowledgment indicates *prima facie* that the reply was received after issuance of the impugned assessment order.

6. On examining the impugned assessment order, it is recorded therein that no reply was received and that each defect dealt with therein is confirmed on that account. In these circumstances, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand on merits, albeit by putting the petitioner on terms.

7. For reasons set out above, the impugned order dated 30.12.2023 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 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.

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

11.06.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J

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