IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

CORAM

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.14182 of 2024 &
W.M.P.Nos.15373, 15375 and 15376 of 2024

M/s R.V.Engineering Construction
No.58, Sundarammal Illam, Elango Street
Poombukar Nagar, Ernavoor – 600 057
Represented by its sole Proprietor
Mr.Ramaiya Vivekanandan ... Petitioner

Vs.

1.The Commissioner
Office of Principal and Special Commissioner of Commercial Taxes
Office of Commercial Taxes
Ezhilagam, Chepauk, Chennai – 600 005.

2.Joint Commissioner (ST)
Tiruvallur Division
Integrated Commercial Taxes Building
Chennai North Division
No.32, Elephant Gate Bridge Road, (Walltax Road)
Vepery, Chennai – 600 003.

3.Assistant Commissioner (ST) (FAC)
Thiruvottiyur Assessment Circle
Integrated Commercial Taxes Building
Chennai North Division
No.32, Elephant Gate Bridge Road (Walltax Road)
Vepery, Chennai – 600 003.

4.The Branch Manager
Bank of Baroda
Wimco Nagar Branch, No.665, T.H.Road
Thiruvottiyur, Chennai – 600 019. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminating in Order No. GSTIN 33AATPV9003B1ZN/ 2017-18 dated 28.12.2023 issued by the 3rd respondent and consequential communication dated 09.05.2024 addressed to the 4th respondent and quash the same and consequently direct the 3rd respondent to refund to the petitioner, all the amounts recovered / realized from the petitioner pursuant to the Order No. GSTIN 33AATPV9003B1ZN/2017-18 dated 28.12.2023 issued by the 3rd respondent.

For the Petitioner : Mr.V.Hari Babu

For the Respondents: Mrs.K.Vasanthamala, GA
for RR1 to 3
Mr.J.Harikrishna for R4

ORDER

Challenging the impugned assessment Order No. GSTIN 33AATPV9003B1ZN/ 2017-18 dated 28.12.2023 issued by the 3rd respondent, the petitioner has filed the present Writ Petition.

2. It is the case of the petitioner that it is a registered dealer under TN GST Act. The petitioner – Company has been regularly filing the GST returns and making payments of all the statutory taxes, without delay or default. However, all of a sudden, on 13.05.2024, the petitioner's Banker – the 4th respondent herein sent a communication dated 09.05.2024 stating that the petitioner – Company had defaulted in payment of tax, hence affecting under Section 75 (12) of the TN GST Act, 2017 / CGST Act 2017 was issued by the 3rd respondent on 09.05.2024. Hence, the present Writ Petition.

3. The learned counsel for the petitioner would submit that an exparte assessment order was passed. The petitioner was not in a position to participate in the proceedings and also he was not able to file all the records, since the relevant particulars were seized by the police personnel in connection with the murder of the petitioner's son. Therefore, the petitioner was not able to participate and file his reply. Though all the relevant particulars were uploaded in the online web portal, the impugned order was passed without considering the same, which is in violation of principles of natural justice. It is only the respondents who have

failed to provide any opportunity of personal hearing to the petitioner, to put forth his case.

4. Heard the learned counsel on either side and perused the materials available on record.

5. It appears that due to the death of the petitioner's son, he was not able to file the reply. Further, all the relevant documents were seized by the police official for investigation. Thus, the petitioner was completely handicapped in filing his reply and to participate in the proceedings.

6. Therefore, considering the aspect that the impugned order was passed without providing any opportunity of personal hearing to the petitioner and in the interest of justice, this Court feels that it is just and necessary to provide an opportunity to the petitioner to establish their case before the respondents. In such view of the matter, this Court is inclined to set aside the impugned order.

7. Accordingly, the impugned order No. GSTIN 33AATPV9003B1ZN/ 2017-18 dated 28.12.2023 issued by the 3rd respondent and consequential communication dated 09.05.2024 addressed to the 4th respondent are set aside. While setting aside the impugned orders, this Court remits the matter back to the 3rd respondent for reconsideration. The petitioner is directed to file his reply within a period of three (3) weeks from the date of receipt of a copy of this order. After receipt of the reply, the authorities concerned shall fix a date for personal hearing by sending a notice to the petitioner providing 14 clear days time and thereafter, pass orders on merits and in accordance with law.

8. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

24.09.2024

Speaking/Non-speaking order
Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To
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KRISHNAN RAMASAMY.J.,
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