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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.14994 of 2024 and
W.M.P.Nos.16291 & 16292 of 2024

Neelan Pharmacy and General,
Represented by its Managing Partner,
Mrs.S.Priyadharshini,
Old No.246/2, Natesan Nagar 3rd Main Road,
New No.74, Kaliamman Koil Street,
Virugambakkam, Chennai-600 092. .. Petitioner

-vs-

The Deputy State Tax Officer,
(Formerly known as Deputy Commercial Tax Officer),
Saligraman Assessment Circle,
Central-I, Chennai Central,
Nos.15 & 16, Malligai Avenue, 1st floor,
100 feet road, Kolathur,
Chennai-600 099. ... Respondent

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 Respondent in

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Reference Number ZD3304240081620/2018-19 dated 01.04.2024 and quash the same as arbitrary, illegal.

For Petitioner : Mr.S.Ramanan

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An order in original dated 01.04.2024 is challenged in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. The petitioner is a partnership firm engaged in the retail trading of medical, surgical and pharmaceutical products. They had availed of the composition scheme. Upon scrutiny of the return, show cause notice dated 17.10.2023 was issued. Such show cause notice called upon the petitioner to explain the disparity between the purchase value as per the GSTR 2A return and the turnover reported in the petitioner's GSTR 4/CMP-08 return. The petitioner submitted replies dated 07.02.2024 and 09.02.2024. The

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impugned order was issued in these circumstances on 01.04.2024.

3. Learned counsel for the petitioner submits that the disparity is on account of not taking into consideration the closing stock and opening stock. He further submits that the petitioner could not participate in the personal hearing because the shop was closed on account of the metro rail work being undertaken in the vicinity of the shop. On instructions, learned counsel 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 the respondent. By referring to the impugned order, he submits that the order was preceded by show cause notice dated 17.10.2023 and multiple reminders. He also points out that the petitioner's reply was taken into consideration.

5. On examining the impugned order, it follows that the petitioner's

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reply was referred to but was rejected as not acceptable. The reason for such rejection is that the petitioner did not enclose the profit and loss account and stock details for verification. Learned counsel for the petitioner contended that the petitioner could not participate in the personal hearing on account of the shop being closed due to metro rail work. As a result, it appears that the petitioner was unable to produce relevant documents at the personal hearing. These documents could, however, have been enclosed with the petitioner's reply. Therefore, it becomes necessary to put the petitioner on terms.

6. For reasons set out above, the impugned order dated 01.04.2024 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 permitted to submit documents in support of the reply within the aforesaid period. Upon receipt thereof 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

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from the date of receipt of documents from the petitioner.

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

18.06.2024

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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