IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17416 of 2024
and
W.M.P.Nos.19188, 19189 & 19191 of 2024

Tvl Priya Marketing
Rep by Proprietor MK.Andu. ... Petitioner

Versus

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (ST) (FAC),
Kodungaiyur Assessment Circle,
No.32 Integrate Commercial Tax Complex,
Elephant Gate Bridge Road,
Chennai-600 003. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the record relating to the order of the order of the 2nd respondent in GSTN: 33AGQPA2611M1ZK/2018-19 dated 30/10/2023 and quash the same.

For Petitioner : Mr. B. Ramessh Kumaar

For Respondents : Mrs. K. Vasanthamala,
Government Advocate (Tax)

ORDER

An order in original dated 30.10.2023 imposing late fee and penalty on the petitioner is subject of challenge in this writ petition.

2. The petitioner asserts that late fee and penalty were imposed on him in contravention of statutory prescription. It is also stated that the petitioner was unable to participate in proceedings because he was unaware of proceedings since all communications were uploaded on the GST portal and not communicated to him through any other mode.

3. Learned counsel for the petitioner submits that the computation of late fee is arbitrary and not in accordance with the statute. On instructions, he submits that the petitioner agrees to remit 10% of the late fee component in the impugned order as a condition for remand.

4. Mrs. K. Vasanthamala, learned Government Advocate, accepts notice for the respondents. She submits that principles of natural justice were complied with by issuing intimation dated 23.08.2022, show cause notice dated 07.01.2023 and reminder notice dated 23.03.2023. She also

submits that the petitioner admitted that the annual return was filed belatedly and therefore interference is not warranted.

5. On examining the impugned order, it is clear that the proposal for levy on late fee and penalty was confirmed on account of the taxpayer neither replying to the notice nor availing of the personal hearing. By taking into account the assertions that non-participation was on account of not being aware of the proceedings and that late fee was not computed in accordance with statute, the interest of justice warrants reconsideration subject to the petitioner being put on terms.

6. Therefore, the impugned order dated 30.10.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the late fee component in the impugned order within 15 days 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 late fee component was remitted by the petitioner, the assessing officer is directed to provide a reasonable opportunity to the

petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of reply from the petitioner. In view of the impugned order being set aside, the bank attachment is raised.

7. The Writ Petition is disposed of on the above terms. There shallbe no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

19.07.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: No
klt

To
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SENTHILKUMAR RAMAMOORTHY,J.

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