IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15062 of 2024
and WMP Nos.16371 and 16372 of 2024

Maheshkumar Sharma Vijay Sharma,
Proprietor of ICM Industries (Defunct),
71/A, V.K.Mill Compound,
BG Road, Sandaipet Shevapet,
Salem 636 002. ..Petitioner

Vs.

The Assistant Commissioner (Circle)
Anathanapatty,
Salem. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari, calling for the records on the files of the impugned proceedings of the respondent in GSTIN:33AJTPV8943P1ZW vide Form GST DRC-07 having Ref No.ZD331120000668Z dated 06.11.2020 for the tax period 2018-2019 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

ORDER

By this Writ Petition, an assessment order in respect of the assessment period 2018-2019 is challenged.

2. The petitioner states that his GST registration was cancelled on account of non-filing of returns. The petitioner further states that his business was affected by the Covid 19 pandemic and that banks had initiated proceedings by declaring the petitioner's account as Non-Performing Assets (NPA). As regards the assessment period 2018-2019, she submits that a sum of Rs.10,63,469/- was paid towards tax as against the total dues of Rs.41,06,401/-. She also points out that liability towards interest and penalty were also partly discharged. By further submitting that there is credit in the electronic credit ledger of the petitioner, she seeks another opportunity to contest the tax proposals on merits.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He points out that the assessment was concluded under Section 62 of applicable GST enactments on account of non-filing of returns by the petitioner. He also points out that this order was issued in November 2020. He confirms that amounts indicated by the petitioner were remitted towards tax liability.

4. The record discloses that the impugned assessment order is an order on best judgment basis under Section 62 of applicable GST enactments. In the affidavit in support of the Writ Petition, the petitioner asserted that he was unable to file returns because his business was badly affected during the Covid 19 pandemic and banks had initiated proceedings after declaring the accounts as NPA. As regards this assessment period, more than 10% of the disputed tax demand was remitted. Upon considering the above facts and circumstances cumulatively, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits.

5. For the reasons set out above, the impugned order is set aside and the matter is remitted for reconsideration. The petitioner is permitted to submit a reply to the notice in Form GSTR 3A within 15 days from the date of receipt of a copy of this order. Upon receipt thereof, 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 from the date of receipt of the petitioner's reply. For the avoidance of doubt, it is made clear that amounts paid by the petitioner earlier towards tax liability, interest and penalty shall abide by the outcome of the remanded proceedings.

6. The Writ Petition is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are closed.

18.06.2024

jv

Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To:-

The Assistant Commissioner (Circle)
Anathanapatty,
Salem.

SENTHILKUMAR RAMAMOORTHY, J.

jv

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