IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15138 of 2024 and
W.M.P.Nos.16465 & 16466 of 2024

Mr.Ogadram,
Proprietor of M/s.Sri Bhavani Electricals & Hardwares,
No.2, Vivekananda Main Road,
Sathya Nagar, Kolathur,
Chennai-600 099. .. Petitioner

-vs-

Assistant Commissioner (ST),
Thirumullaivoyal Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai-600 003. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in reference in No.ZD330823102551U dated 18.08.2023 and quash the same and a direction to the respondent may be issued to adjudicate the assessment in the light of the documents submitted on 29.07.2023.

For Petitioner : Mr.R.Swarnavel

For Respondent : Mr.T.N.C.Kaushik, Addl. Govt. Pleader (T)

ORDER

An order in original dated 18.08.2023 is assailed on the ground of breach of principles of natural justice.

2. The petitioner is engaged in selling electrical and plumbing hardware. He had opted for the composition scheme and filed annual returns in Form GSTR 4 and quarterly returns in Form CMP-08. Upon receipt of a notice dated 15.07.2022 by registered post on 19.07.2022, the petitioner replied on 29.07.2022. Since the show cause notice dated 28.11.2022 was uploaded on the portal but not communicated to the petitioner through any other mode, the petitioner states that he was unaware of such show cause notice and did not reply to the same.

3. Learned counsel for the petitioner referred to the reply dated 29.07.2022 and pointed out that the petitioner had stated that the turnover

reported by him in Form CMP-08 was Rs.6,37,595/-. Learned counsel contends that this reply was not taken into consideration in the impugned order. He also submits that the petitioner could not participate in proceedings on account of not being aware of the same and, hence, seeks another opportunity. On instructions, he 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. He points out that principles of natural justice were complied with by issuing intimation dated 28.04.2022 and show cause notice dated 28.11.2022.

5. The petitioner's reply dated 29.07.2022 indicates that the sales turnover as per the return in Form CMP-08 was Rs.6,37,595/-. In the impugned order, the turnover of Rs.5,47,405/- was taken into account. It appears that this sum was compared with the purchase value as per the supplier's GSTR 1 statement. The tax proposal was confirmed on the basis that the tax payer did not respond to the show cause notice. In view of the

assertion that the tax payer could not participate in proceedings on account of being unaware of the same, the interest of justice warrants that the petitioner be provided an opportunity by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 18.08.2023 is set aside subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of 15 days from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice within the aforesaid period. 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 order within a period of three months from the date of receipt of the petitioner's reply.

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

closed.

19.06.2024

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

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To

Assistant Commissioner (ST),
Thirumullaivoyal Assessment Circle,
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SENTHILKUMAR RAMAMOORTHY,J

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