IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15395 of 2024
&
WMP Nos.16737 & 16738 of 2024

M/s.Vijaya Enterprises,
Represented by its Proprietor
Mr.K.Sekar
No.87, Meenambedu Road,
Mannurpet, Padi,
Chennai-600 050. ... Petitioner

Versus

The State Tax Officer,
Korattur Assessment Circle,
Integrated Building for Commercial Taxes
and Registration Department (South Tower)
Government Farm Village, Room No.332,
III Floor, Nandanam,
Chennai-600 035. ...Respondent

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in GSTN:33AALPS2681Q1ZX/2021--2022 dated 07.03.2024, the order dated 7.3.2024 passed under Section 74 and the summary of the order in Form GST DRC-07 dated 7.3.2024 in Reference No.ZD330324039024 and quash the same as passed contrary to the provisions of the Central Goods and Services Tax Act, 2017 and also the Tamil Nadu Goods and Services Tax Act, 2017 and also contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
Mr.C.Sivasubramanian

For Respondent : Mr. V.Prashanth Kiran
Government Advocate(T)

ORDER

In this writ petition, an order in original relating to assessment period 2021-22 is challenged on the ground of breach of principles of natural justice.

2. The petitioner states that show cause notices relating to five different assessment years [2018-2019 to 2022-2023] were

issued at the same time. Therefore, it was difficult for the petitioner to collate relevant records within time. After the petitioner requested for one month's time in such regard, the petitioner states that the order impugned herein was issued without offering a personal hearing.

3. Learned counsel for the petitioner submits that a personal hearing is mandatory under Section 75(4) of the applicable GST enactments if an order adverse to the tax payer is proposed to be issued. By referring to the show cause notice, learned counsel submits that a personal hearing was offered on the same date and that no personal hearing was offered thereafter. Without prejudice, on instructions, learned counsel submits that the petitioner agrees to pay 10% of the disputed tax demand as a condition for remand.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the impugned

order was preceded by an intimation dated 08.05.2023, show cause notice dated 15.11.2023 and that a personal hearing was offered. He also submits that the tax payer requested for one month's time on 22.11.2023 and that the order impugned herein was issued much later.

5. On examining the order impugned herein, it is evident that the tax proposal was confirmed on the ground that the petitioner had not responded to the show cause notice. The petitioner's request for an adjournment is on record and the petitioner has asserted in the affidavit that sufficient time was not available to collate all relevant records especially on account of assessments being undertaken in respect of five assessment years. In these circumstances, albeit by putting the petitioner on terms, it is just and appropriate that the petitioner be provided a reasonable opportunity to contest the tax demand on merits.

6. For reasons set out above, the order impugned herein is set aside subject to the condition that the petitioner remits 10% of the disputed tax demand within one month from the date of receipt of a copy of this order. Within such period, the petitioner is also permitted to reply to the show cause notice. Upon receipt of the petitioner's reply and on 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 three months from the date of receipt of the petitioner's reply.

7. Therefore, W.P.No.15395 of 2024 is disposed of on the above terms. Consequently, connected miscellaneous petitions are closed.

20.06.2024

Index : Yes /No
Speaking Order : Yes /No

Neutral Case Citation : Yes /No
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SENTHILKUMAR RAMAMOORTHY,J.

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To

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Korattur Assessment Circle,
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