



WEB COPY



W.P.No.15691 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15691 of 2024 and
W.M.P.Nos.17100 to 17102 of 2024

M/s.Haarine Associates,
Represented by its Partner,
Mr.R.A.Saravanan,
MIG 303B/1B, Thaarine Nivas,
TNHB Phase II,
Nolambur, Chennai-600 037.

.. Petitioner

-VS-

1. The Assistant Commissioner (ST)(FAC),
Thiruvottiyur Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai-600 003.

2.The Branch Manager
Vijaya Bank, Now Bank of Baroda,
No.30, Vellaier Street,
VGP Paneer Nagar,
Mogappair West, Chennai 600 037.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the impugned proceedings of



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the first respondent in GSTIN:33AADFH0281M1ZH/2017-2018 dated 28.12.2023 and the connected order dated 31.12.2023 passed under section 73 and the summary of the order dated 31.12.2023 in Form GST DRC-07 issued in Reference No ZD331223293706C sand quash the impugned orders as passed contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017 and contrary to the principles of natural justice.

For Petitioner : Mr.Rajkumar P.

For R1 : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An order in original dated 28.12.2023 is assailed both on the ground of breach of principles of natural justice and on the ground of non application of mind. The petitioner had filed returns under applicable GST enactments for assessment period 2017-2018. Pursuant to show cause notice dated 07.08.2023, the impugned order was issued on 28.12.2023.

2. Learned counsel for the petitioner submits that GST enactments came into force on 01.07.2017. Therefore, he submits that the petitioner's GSTR 1 statement, GSTR 3B return and the annual return reflected the turnover from 01.07.2017 to 31.03.2018. Because the period running from



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01.04.2017 to 30.06.2017 was the pre-GST period, he submits that there would be a mismatch between Form 26 AS and the petitioner's GST returns.

Merely on the basis of such mismatch, he submits that tax liability was imposed on the petitioner. On instructions, without prejudice to the above contention, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the 1st respondent. By referring to the impugned order, he points out that principles of natural justice were complied with by issuing notice in Form ASMT 10 dated 05.07.2023, show cause notice dated 07.08.2023 and a personal hearing notice dated 15.09.2023.

4. On examining the impugned order, it is evident that tax liability was imposed on the petitioner on the difference between the turnover reflected in Form 26 AS and the turnover reflected in the petitioner's GST returns. Learned counsel for the petitioner explained this difference by pointing out that the period running from 01.04.2017 to 30.06.2017 does



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not fall within the GST period. Since the impugned order was issued without hearing the petitioner on this aspect, reconsideration is necessary by putting the petitioner on terms with regard to the default in responding to the show cause notice or participate in proceedings.

5. For reasons set out above, the impugned order dated 28.12.2023 is set aside subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks 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 1st 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. On account of the assessment order being set aside, the bank attachment is raised.



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

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

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