



W.P.No.16021 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.16021 of 2024 and
W.M.P.Nos.17503 & 17504 of 2024

Tvl. Annai Earth Movers,
Represented by its Proprietor S.Rajasekar,
No.2, T.V.K. 2nd link road,
K.M.Nagar, Kodungaiyur,
Chennai, Tamil Nadu-600 118.

.. Petitioner

-VS-

The Assistant Commissioner (ST) (FAC),
Kodungaiyur Assessment Circle,
Station No.32, Integrated Commercial Taxes
Office Complex, 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 Certiorari calling for the records of the Respondent order in GSTN:33AUKPS8270Q1ZO/2019-2020 dated 26.08.2023 and to quash the same as it has been passed in violation of principles of natural justice.



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For Petitioner : Ms.N.Janani
for Mr.Adithya Reddy

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

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ORDER

An order dated 26.08.2023 is assailed in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. By asserting that the show cause notice and other communications were uploaded in the “View Additional Notices and Orders” tab on the GST portal and not communicated to the petitioner through any other mode, the present writ petition was filed.

2. Learned counsel for the petitioner submits that the petitioner was unaware of proceedings and therefore could not contest the tax demand on merits. Subsequent to the impugned order, she points out that sums of Rs.2,25,106/- and Rs.4,76,974/- were debited from the bank account of the petitioner. Learned counsel further submits that the amounts debited constitute more than 50% of the disputed tax demand.



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3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing intimation dated 11.07.2022, show cause notice dated 03.04.2023 and a reminder notice dated 16.06.2023.

4. On perusal of the impugned order, it appears that the tax proposal related to a mismatch between the petitioner's GSTR 3B return and the auto-populated GSTR 2A in so far as Input Tax Credit (ITC) is concerned. Such tax proposal was confirmed on the ground that the petitioner did not reply to the show cause notice or attend the personal hearing. By taking into account the assertion that such non participation was on account of being unaware of proceedings, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits. The petitioner has placed on record evidence that sums of Rs.2,25,106/- and Rs.4,76,974/- were appropriated from the petitioner's bank account after the impugned order was issued. Since these amounts constitute more than 50% of the disputed tax demand, the revenue interest is protected to that extent.



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5. Therefore, the impugned order dated 26.08.2023 is set aside. The petitioner is permitted to submit a reply to the show cause notice 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 appropriated pursuant to the assessment order 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, connected miscellaneous petitions are closed.

27.06.2024

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

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To
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SENTHILKUMAR RAMAMOORTHY,J

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