IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.15784 of 2024
and W.M.P.Nos.17191 & 17193 of 2024

M.Senthil Kumar
Sole Proprietor of M.S.S Engineering Works
No.47, Sri Balaji Nagar,
Chinthalakuppam Village,
Gummidipoondi Taluk,
Tiruvallur 601 201. ... Petitioner

-vs-

The State Tax Officer
Gummidipoondi Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN: 33BRMPS5645H1ZD/2017-18 dated 17.11.2023 passed by the respondent herein and quash the same.

For Petitioner : Ms.S.P.Sri Harini

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

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ORDER

An assessment order dated 17.11.2023 is assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that he was unaware of proceedings culminating in the impugned assessment order because the show cause notice and other communications were uploaded on the “view additional notices and orders” tab in the GST portal and not communicated to the petitioner through any other mode. Upon the GST Department informing the petitioner's accountant about the order in March 2024, it was stated that a statutory appeal was filed, but such appeal was rejected on the ground of limitation.

2. Learned counsel for the petitioner submits that the tax proposal related to a mismatch between the petitioner's GSTR 3B returns and the GSTR 1 statement. She points out that such mismatch occurred on account of supplies made to SEZ units under a letter of undertaking without payment of tax. If provided an opportunity, she submits that the petitioner would be in a position to explain the mismatch satisfactorily. On instructions, learned counsel submits that the petitioner agrees to remit 5% of the disputed tax demand in addition to the 10% remitted while filing the statutory appeal.

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 a notice in Form ASMT 10 dated 17.05.2023 and a show cause notice dated 25.09.2023.

4. On perusal of the impugned order, it is clear that the tax proposal was confirmed solely because the petitioner failed to reply to the show cause notice or attend the personal hearing. In view of the assertion that the petitioner could not participate on account of being unaware of proceedings, it is just and appropriate that an opportunity be provided to the petitioner to contest the tax demand on merits by putting the petitioner on terms.

5. For reasons aforesaid, impugned order dated 17.11.2023 is set aside on condition that the petitioner remits an additional 5% towards the disputed tax demand within ***fifteen days*** from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit a reply to the show cause notice. On receipt of the petitioner's reply and on being satisfied that 15% of the disputed tax demand, in the aggregate, 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.

6. W.P.No.15784 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.17191 and 17193 of 2024 are closed.

26.06.2024

rna
Index : No
Internet : Yes
Neutral Citation: No

To

The State Tax Officer
Gummidipoondi Assessment Circle,
No.32, Elephant Gate Bridge Road,
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SENTHILKUMAR RAMAMOORTHY,J

rna

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