IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15779 of 2024 and
W.M.P.Nos.17183 & 17184 of 2024

M/s.Abi Constructions,
Rep. By its Proprietor
Mr.Govintharaj Sammandham
#17, Papanasam Vaaniya Street,
Papanasam, Thanjavur,
Tamil Nadu: 614 205. ... Petitioner

Versus

1. The State Tax Officer,
   Papanasam Assessment Circle,
   Papanasam, Thanjavur,
   Tamil Nadu.

2. The Goods & Services Tax Network,
   Rep. By its Nodal Officer,
   4th Floor, East Wing, Asset 11,
   Hospitality District, Aerocity,
   New Delhi:110 037. ...Respondents

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to call for the records of the impugned assessment order in Ref.No.ZD331023197721L dated

30.10.2023 passed under Section 74 of the CGST/TNGST Act, 2017, and uploaded along with the summary of order in DRC-07 for tax period 2021-22, from the files of the first respondent herein and quash the same.

For Petitioner	:	Ms. Aparna Nandakumar
For Respondents	:	Mr. C. Harsha Raj, Addl. Govt. Pleader for R1
		Mr.Ramesh Kutty Standing Senior Counsel for R2

ORDER

By this writ petition, an order in original dated 30.10.2023 is assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. The petitioner asserts that the show cause notice and other communications relating to the impugned assessment order were uploaded on the GST portal but not communicated to the petitioner through any other mode. Since the petitioner was not aware of proceedings, it is stated that the petitioner could not participate in the same.

3. Learned counsel for the petitioner submits that the tax proposal relates to the mismatch between the petitioner's GSTR-3B returns and the GSTR-7 return filed by the recipient of construction services. She further submits that such mismatch occurred on account of the recipient of services accounting for such services in the assessment period 2021-22, whereas the petitioner recorded the transactions in 2022-23 when payments were received from the recipient of services.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the first respondent and Mr.Ramesh Kutty, learned senior standing counsel, accepts notice on behalf of the second respondent.

5. Mr.C.Harsha Raj submits that the reminders were sent to the petitioner through RPAD and that such reminder was received by the petitioner on 01.06.2023. Mr.Ramesh Kutty also points out that when the recipient of services files Form GSTR-7, the petitioner would have received credit in the electronic cash ledger of the petitioner. For such

reason, he submits that the petitioner's contention is untenable.

6. On examining the impugned order, it is evident that the tax proposal was confirmed because the tax prayer did not respond to the show cause notice by filing objections. The impugned order indicates that the personal hearing notice dated 10.03.2023, reminder dated 29.05.2023 were sent by RPAD and that the latter was received by the petitioner on 01.06.2023. In these circumstances, the explanation of the petitioner that he was unaware on account of notices being uploaded on the GST portal cannot be accepted. At the same time, it is apparent that the tax proposal was confirmed without the petitioner being heard and liability was imposed under Section 74 of applicable GST enactments. In these facts and circumstances, the interest of justice warrants that an opportunity be provided to the petitioner by putting the petitioner on terms. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 15% of the disputed tax demand as a condition for remand.

7. Therefore, the impugned order dated 30.10.2023 is set aside on condition that the petitioner remits that 15% of 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 directed 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 was received, the first 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 a copy of the petitioner's reply.

8. W.P.No.15779 of 2024 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

24.06.2024

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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   Papanasam, Thanjavur,
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