IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16199 of 2024
and W.M.P.Nos.17741, 17742 & 17744 of 2024

Tvl. Shiv Fancy Store
Represented by its Proprietor
Mr.Goparam
Ground Floor, No.94,
Big Bazaar Street,
Kamakshi Amman Kovil Street,
Thiruvannamalai,
Tamil Nadu 606 601. ... Petitioner

-vs-

1.The Deputy State Tax Officer – II,
Harbour Assessment Circle,
No.32, Integrated Building for Commercial Taxes Building,
Room No.325, 3rd Floor,
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

2.The Branch Manager,
State Bank of India – Sowcarpet Branch,
Govindappa Naicken Street,
Chennai – 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for records of the impugned order passed in GSTIN 33ATZPG4121G1ZQ / 2017-18 dated 23.11.2023 on the file of the first respondent along with the consequential DRC-07 order under Section 73, Ref.No. ZD331123140967G dated 23.11.2023 on the file of the first respondent and quash the same as illegal, arbitrary against the principles of natural justice and against the law.

For Petitioner : Mr.J.Poojesh

For Respondent 1 : Mr.V.Prasanth Kiran, GA (T)

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ORDER

An order in original dated 23.11.2023 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 the show cause notice and other communications were uploaded on the GST portal in the “view additional notices and orders” tab, but not communicated to the petitioner through any other mode. On account of not being aware of proceedings, the petitioner asserts that he could not participate in such proceedings.

2. Learned counsel for the petitioner submits that the tax proposal relates to a mismatch between the petitioner's GSTR 3B and GSTR 1 returns. If provided an opportunity, he submits that the petitioner would be in a position to explain the mismatch satisfactorily. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing notice in Form ASMT 10 dated 31.08.2023, show cause notice dated 26.09.2023 and by offering a

personal hearing.

4. On examining the impugned order, it is evident that the tax proposal was confirmed because the petitioner did not file an objection to the show cause notice. By taking into account the assertion that non participation was on account of not being aware of proceedings, it is just and necessary that the petitioner be provided an opportunity to contest the tax demand on merits, albeit by putting the petitioner on terms.

5. For reasons aforesaid, impugned order dated 23.11.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand after giving credit to amounts appropriated from the petitioner's bank account. Such remittance shall be made within ***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 said period. Upon receipt thereof and on being satisfied that 10% 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. In view of the assessment order being set aside, the bank attachment is raised.

6. W.P.No.16199 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.17741, 17742 and 17744 of 2024 are closed.

03.07.2024

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

To

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SENTHILKUMAR RAMAMOORTHY,J

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