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W.P.No.16048 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16048 of 2024
and W.M.P.Nos.17551 & 17553 of 2024

Tvl.SMA TEX,
Rep. by its Proprietor
S.M.Annamalai, No.4/631A,
Erumapalayam, Kalrampatty,
Salem, Tamil Nadu-636 015.

... Petitioner

-VS-

1. The Proper Officer/Assistant Commissioner (ST)(FAC),
Annathanapatty Assessment Circle,
Integrated Commercial Taxes Building,
4th floor, Pitchards Road,
Hasthampatty, Salem-7.

2. The Inspector of Sales Tax Recovery,
Annathanapatty Circle, Salem-7.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order vide reference No. 33AETPA7760A1ZQ/2018-19 dated 03.03.2023 demanding Rs.38,34,860/- towards tax, interest and penalty and consequent communication towards attachment of the petitioner's property



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which is issued by the 1st respondent to 2nd respondent dated 16.05.2024 and quash the same.

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For Petitioner : Mr.C.Prabakaran

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

ORDER

In this writ petition, an order dated 03.03.2023 and the consequential distraint order dated 16.05.2024 are assailed. The petitioner asserts that a notice for cancellation of the GST registration was received on 21.01.2019 and that such registration was cancelled on 27.02.2019. On account of cancellation of the GST registration, the petitioner asserts that he was unaware of proceedings culminating in the impugned assessment order under Section 62 until distraint proceedings were initiated.

2. Learned counsel for the petitioner submits that the petitioner had suffered business losses and that the registration was cancelled under those circumstances. In those circumstances, he submits that the petitioner was unable to participate in proceedings culminating in the impugned order. He also submits that the petitioner agrees to remit 10% of the disputed tax



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demand under the impugned assessment order as a condition for remand.

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3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. He submits that principles of natural justice were complied with by issuing notice dated 05.01.2023 in Form GSTR 3A. Since the petitioner failed to file returns upon receipt thereof, he submits that the assessing officer was constrained to make the assessment on best judgment basis under Section 62 of applicable GST enactments.

4. On examining the impugned assessment order, it is evident that the assessment was made on best judgment basis because the petitioner failed to respond to the notice in Form GSTR 3A. In the affidavit in support of this writ petition, he asserts that his registration was cancelled and that he was unable to carry on business due to financial stringency. In the above facts and circumstances, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits, albeit by putting the petitioner on terms.

5. Therefore, the impugned order dated 03.03.2023 is set aside on



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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. In view of the assessment order being set aside, the distraint order is also set aside.

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

01.07.2024

Index : Yes / No

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Internet : Yes / No

Neutral Citation: Yes / No

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To

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