IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.16937 of 2024 and
W.M.P.Nos.18644 & 18645 of 2024

Tvl. Altech Engineering,
Represented by its Proprietor,
Mr.R.Gunasekaran, No.11,
Subalakshmi Nagar,
Vazhuthlaimedu, Chennai-600 045. .. Petitioner

-vs-

1. Office of the Assistant Commissioner,
Thirumudivakkam Assessment Circle,
Integrated CT & Regn Dept. (South Tower),
Block No. 19, T.S.No.2, 3rd floor,
Govt. Farm Village, Nandanam, Chennai-600 035.

2. State Tax Officer,
Thirumudivakkam Assessment Circle,
Integrated CT & Region Dept. (South Tower),
Block No. 19, T.S.No.2, 3rd floor,
Govt. Farm Village, Nandanam, Chennai-600 035.

3. Deputy Commissioner (ST) (FAC),
Chengalpattu Zone,
No.26, 2nd floor, Abirami Complex,
Mahalakshmi Nagar, Thimmavaram,
Kanchipuram Main Road,
Chengalpattu-603 101.

4. The Branch Manager,
State Bank of India,
SME Thirumudivakkam Branch,
SAP Industries,
SIDCO Industrial Estate,
Thirumudivakkam-600 044. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the 2nd Respondent in TN-GST/ 33AJPPG0455M1Z2/2020-21 dated 13.06.2023 and consequential impugned proceedings of the 3rd Respondent in TN-GST/ 33AJPPG0455M1Z2/2018-19 - 2020-21 dated 08.11.2023 along with and quash the same and consequentially direct the 1st Respondent to entertain the records, documents and reply from the Petitioner and then pass order after affording a personal hearing to the petitioner.

For Petitioner : Mr.A.S.Ragul Adhithya

For R1 to R3 : Mrs. K.Vasanthamala, Govt. Adv. (T)

ORDER

In this writ petition, an order dated 13.06.2023 is challenged 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 but not communicated to the petitioner through any other mode. Consequently, it is stated that the petitioner was unaware of these proceedings until recently and could not participate in the same.

2. Learned counsel for the petitioner submits that the tax proposal relates to alleged wrongful availment of Input Tax Credit (ITC). If provided an opportunity, learned counsel submits that the petitioner would be able to establish that only eligible ITC was claimed. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for respondents 1 to 3. She submits that principles of natural justice were complied with by issuing intimation dated 20.09.2022, show cause notice dated 02.11.2022 and by offering a personal hearing.

4. On examining the impugned order, it is evident that the tax proposal was confirmed because the tax payer failed to reply to the show cause notice or attend the personal hearing. In view of the assertion that such non participation was on account of not being aware of proceedings, the interest of justice warrants that the petitioner be provided an opportunity, albeit by putting the petitioner on terms.

5. Therefore, the impugned order dated 13.06.2023 is set aside on 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 2nd 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 bank attachment is raised.

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

04.07.2024

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

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To

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