IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16287 of 2024
and W.M.P.Nos.17820, 17821 & 17823 of 2024

A S Peacock Store
Rep by its Proprietor Abdul Azeez Abdul Kareem,
No.9, Nyniappan Naicken Street,
Park Town,
Chennai 600 003. ... Petitioner

-vs-

1.The Deputy Commercial Tax Officer,
Park Town Assessment Circle,
Integrated Building for Commercial Taxes Department,
Chennai North Division,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

2.The Assistant Commissioner (State Tax),
Park Town Assessment Circle,
Integrated Building for Commercial Taxes Department,
Chennai North Division,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

3.The Branch Manager,
Indian Bank,
M G T Branch,
P B No.1284, 155 Thambu Chetty Street,
Chennai – 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the 1st respondent in Reference Number: ZD331023199022V dated 30.10.2023 for the financial year 2017-18 and quash the same as arbitrary, illegal and consequently direct the 2nd respondent to defreeze the bank account CA No.420158877 by attached vide notice in DRC-13 bearing GSTIN: 33AAAPA6728R1ZK/2017-18 dated 25.03.2024 of the petitioner.

For Petitioner : Mr.R.Saravanan

For Respondents 1, 2 : Mr.V.Prashanth Kiran, GA (T)

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ORDER

An order dated 30.10.2023 is challenged in this writ petition 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 order until receipt of notice dated 21.03.2024 by registered post. He also submits that his GST registration was cancelled on 09.10.2018 and, therefore, he was not monitoring the portal.

2. Learned counsel for the petitioner submits that the petitioner could not participate in proceedings on account of being unaware of the same. If provided an opportunity, he submits that the petitioner would be in a position to explain the mismatch between the petitioner's GSTR 3B and GSTR 1 returns, which form the basis for the confirmed tax proposal. On instructions, he 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 respondents. He submits that principles of natural justice were complied with by issuing intimation dated 31.08.2023,

show cause notice dated 15.09.2023 and by offering a personal hearing. He also points out that the bank attachment is not only in respect of assessment period 2017-18 but also 2018-19.

4. On perusal of the impugned order, it is evident that the tax proposal was confirmed because the petitioner did not reply to the show cause notice or participate in the personal hearing. By taking into account the assertion that non participation was on account of the petitioner not being aware of proceedings in the context of the cancellation of the petitioner's GST registration, it is just and appropriate that the petitioner be provided an opportunity after putting the petitioner on terms.

5. For reasons aforesaid, impugned order dated 30.10.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand within ***two weeks*** from the date of receipt of a copy of this order. The petitioner is permitted to file a reply to the show cause notice within the aforesaid period. On receipt of the petitioner's reply and on being satisfied that 10% 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 the petitioner's reply. In view of the assessment order being set aside, the bank attachment is raised.

6. W.P.No.16287 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.17820, 17821 and 17823 of 2024 are closed.

04.07.2024

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Index : No
Internet : Yes
Neutral Citation: No

SENTHILKUMAR RAMAMOORTHY,J

rna

To

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