IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17147 of 2024
and
W.M.P.Nos.18923, 18925, 18928 & 18930 of 2024

Rajapandian Ramesh
No.13/12 LLIG NH-1,
Thirunavukarasu Street,
Maraimalai Nagar,
Kancheepuram-603 209. ... Petitioner

Versus

1.Commercial/State Tax Officer,
4/109, Second Floor,
Bangalore Chennai Highway,
Varadarajapuram,
Nazarathpet, Chennai- 123.

2.The Branch Manager,
Tamil Nadu Mercantile Bank Ltd,
(IFSC Code Tmbl0000222)
D.No.33- 3 and 4, Shekilar Street,
First Floor, Appolo Complex,
Maraimalai Nagar - 603209. Chengalput.

3.Deputy Commissioner (ST),
Cehngalpattu Zone,
No.26, Abirami Complex,
Mahalakshmi Nagar,
Thimmavaram, Chengalpattu-603101. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to quash the order under Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017 (TNGST Act) dated 16.11.2023 having Reference Number No. ZD3311230960079 along with Summary of the order dated 16.11.2023 having reference No.ZD331123096007P (Impugned Order) for the Year 2017-18 passed by the Respondent and pass.

For Petitioner : Mr. N.V. Krishnan,
for Mr. N.V. Balaji

For Respondents : Mrs. K. Vasanthamala, (for R1 & R3)
Government Advocate(Tax)

ORDER

An order in original dated 16.11.2023 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 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 proceedings and could not participate in the same.

3. Learned counsel for the petitioner seeks an opportunity for the petitioner to contest the tax demand on merits. He submits that the petitioner would be in a position to explain the mismatch between the GSTR 1 and GSTR-3B returns if provided such opportunity. On instructions, learned counsel for the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mrs. K. Vasanthamala, learned Government Advocate (Tax), accepts notice on behalf of the first and third respondents. She submits that proceedings against the petitioner were initiated pursuant to scrutiny of returns. She also submits that principles of natural justice were complied with by issuing intimation dated 23.06.2023, show cause notice dated 09.09.2023 and by offering a personal hearing.

5. On examining the impugned order, it is evident that the tax proposal was confirmed because the taxpayer did not file a 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 the proceedings, reconsideration is warranted by putting the petitioner on terms.

6. Therefore, the impugned order dated 16.11.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner

remits 10% of the disputed tax demand as agreed to within 15 days from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is also permitted to submit a reply to the show cause notice. On receiving such reply from the petitioner and upon being satisfied that 10% of the disputed tax demand 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. On account of the assessment order being set aside, the bank attachment is raised.

7. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

15.07.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: No

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To

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