IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16561 of 2024 and
W.M.P.Nos.18163, 18165 & 18167 of 2024

Tvl. Mm Enterprises,
Represented by its Proprietor, Mr. Manish Jain,
No. 2/12, Bhakthawachalam Street,
TSR Nagar, Chennai - 600 019. ... Petitioner

-vs-

1. State Tax Officer (ST),
Thiruvottiyur Assessment Circle,
No.32, Integrated Commercial Taxes Building,
Elephant Gate Bridge Road,
Vepery, Chennai - 600 003.

2. The Assistant Commissioner (ST),
Thiruvottiyur Assessment Circle,
Integrated Commercial Taxes Building,
Room No.215, Door No.32, 2nd floor,
Elephant Gate Bridge Road,
Vepery, Chennai - 600 003.

3.The Branch Manager,

IDBI Bank, Sri Kanyaka Parameswari Arts
and Science College for Women,
No.1, Audiappa Naicken Street,
Chennai - 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the 1st Respondent herein in FORM GST DRC-07 with Reference No. ZD330823011163X dated 02.08.2023 along with detailed order in GSTIN 33AALHM0165K1Z5 / 2017-18 dated 02.08.2023, for the assessment period 2017-18 and quash the same.

For Petitioner : Mr.B.Syed Abdul Wakeel
for Mr.N.Chandirasekar

For R1 & R2 : Mr.G.Nanmaran, Spl. G.P.

ORDER

An order in original dated 02.08.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. By asserting that the show cause notice and other communications were uploaded in the "View Additional Notices and Orders" tab on the GST portal and that physical service thereof was not effected on the petitioner, the present writ petition was filed.

2. Learned counsel for the petitioner submits that the confirmed tax proposal relates to alleged purchases made from a non-existent supplier. He submits that the petitioner has all relevant documents to establish that goods were supplied to the petitioner. He also points out that a sum of Rs.66,828/- was recovered from the petitioner's bank account pursuant to a bank attachment, and that such amount represents about 50% of the disputed tax demand.

3. Mr.G.Nanmaran, learned Special Government Pleader, accepts notice for respondents 1 & 2. He submits that principles of natural justice were complied with by issuing intimation dated 03.08.2022, show cause notice dated 22.11.2022 and by offering a personal hearing. He also submits that the burden of proof is on the tax payer in terms of Sections 16 and 155 of the applicable GST statutes to establish that only eligible Input Tax Credit (ITC) was claimed.

4. On perusal of the impugned order, it is clear that the tax proposal

was confirmed because the tax payer failed to reply to the show cause notice and to appear at the personal hearing granted on 15.06.2023. By taking into account the assertion that such non participation was on account of being unaware of proceedings, the interest of justice warrants that the petitioner be provided an opportunity. In this connection, it is pertinent to notice that a sum of Rs.66,828/- was recovered from the petitioner's bank account, and that this sum represents about 50% of the disputed tax demand.

5. For reasons set out above, the impugned order dated 02.08.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice and enclose all relevant documents within 15 days from the date of receipt of a copy of this order. Upon receipt thereof, 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 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.

08.07.2024

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

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To

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