IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16667 of 2024
and W.M.P.Nos.18302 & 18316 of 2024

M/s.Tvl. T.Gobi Contractor,
Represented by its Proprietor Sri. T.Gopi,
No.1/344, Kottayur,
B.Thurinjipatti,
Pappireddypatty, Dharmapuri-635 301. ... Petitioner

-vs-

1. The Deputy Commissioner (ST) (GST-Appeal),
Erode and Salem,
Integrated Commercial Taxes Building,
Room No.233, II floor,
No.17, Pitchards Road, Salem – 7.

2.The State Tax Officer,
Harur Assessment Circle, Harur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in Roc.No.1459/A1/2024 and quash the proceeding dated 30.05.2024 passed therein and further direct the first respondent to dispose the Appeal filed for the Assessment year 2021-2022 on merits after providing opportunity of personal hearing to the petitioner.

For Petitioner : Mr.Raveendran B.

For Respondents : Mr.G.Nanmaran, Spl.G.P.

ORDER

By this writ petition, the petitioner challenges appellate order dated 30.05.2024 and seeks a consequential direction to the 1st respondent to dispose of the appeal on merits after providing a reasonable opportunity to the petitioner.

2. An order of assessment dated 12.11.2023 was issued ex parte. The petitioner asserts that GST compliances were entrusted to a consultant and that such consultant did not know about the proceedings because the show cause notice and other communications were uploaded in the "View Additional Notices and Orders" tab on the GST portal. After coming to

know of the order in original in April 2024, the petitioner presented the statutory appeal on 15.05.2024. Such appeal was rejected on the ground that it was filed beyond the condonable period.

3. Learned counsel for the petitioner submits that the petitioner was not heard before the order in original was issued. In such circumstances, he submits that the petitioner should have an opportunity to contest the matter on merits either before the original authority or the appellate authority. On instructions, learned counsel submits that the petitioner agrees to remit an additional 5% of the disputed tax demand as a condition for remand.

4. Mr.G.Nanmaran, learned Special Government Pleader, accepts notice for the respondents. He submits that the order in original was issued in compliance with principles of natural justice by issuing notice in Form ASMT 10 dated 20.10.2022, intimation dated 21.12.2022 and show cause notice dated 12.01.2023.

5. On perusal of the order in original, it is evident that the case relates to a mismatch between the petitioner's GSTR returns and those filed by tax deductors/service recipients in Form GSTR 7. Such tax proposal was confirmed because the tax payer failed to reply to the show cause notice. By taking into account the assertion that non participation was on account of not being aware of proceedings, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax proposal on merits by putting the petitioner on terms. It should be noticed that the petitioner had remitted 10% while presenting the statutory appeal. The petitioner has also agreed to remit an additional 5%.

6. In the facts and circumstances set out above, W.P.No.16667 of 2024 is disposed of by moulding the relief and setting aside the order in original dated 12.11.2023 subject to the condition that the petitioner remits an additional 5% of the disputed tax demand within 15 days 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 15% of the disputed tax

demand, in the aggregate, 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. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.07.2024

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

kj

To

1. The Deputy Commissioner (ST) (GST-Appeal),
Erode and Salem,
Integrated Commercial Taxes Building,
Room No.233, II floor,
No.17, Pitchards Road, Salem – 7.

2.The State Tax Officer,
Harur Assessment Circle,
Harur.

SENTHILKUMAR RAMAMOORTHY,J

kj

W.P.No.16667 of 2024
and W.M.P.Nos.18302 & 18316 of 2024

09.07.2024