IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17150 of 2024
and
W.M.P.Nos.18929 & 18931 of 2024

Tvl.Samikannu Mariappan ... Petitioner

Versus

1.The State Tax Officer (ST),
Saligramam Assessment Circle,
Station No.15 & 16, 100 feet Road,
Malligai Avenue, Chennai – 600 099.

2.The Assistant Commissioner (ST),
Saligramam Assessment Circle,
Station No.15 & 16, 100 feet Road,
Malligai Avenue, Chennai – 600 099. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records of the first respondent impugned order passed in GSTIN/33AAQPM1720R1ZA/ 2019-20 dated 20.04.2023 and consequential Form GST DRC-07 bearing Reference No.ZD330423095356C dated 20.04.2023 November 2019, quashing the same as *void ab initio,* without jurisdiction, arbitrary, and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : M/s. P. Jayalakshmi
For Respondents : Mr. V. Prashanth Kiran,
Government Advocate (Tax)

ORDER

An order in original dated 20.04.2023 is assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. By asserting that the petitioner had entrusted GST compliances to a local auditor and that the petitioner was unaware of these proceedings until he received a recovery letter dated 07.02.2024 from the respondents office. The present writ petition was filed in the said facts and circumstances.

3. Learned counsel for the petitioner refers to the recovery letter dated 07.02.2024 and submits that the petitioner is an octogenarian and was unaware of these proceedings. She further submits that the petitioner's turnover is below the prescribed threshold for GST compliances. If provided an opportunity, learned counsel submits that the petitioner would be in a position to establish that the tax proposal is liable to be dropped. On instructions, she submit that the petitioner agrees to remit 10% of the

disputed tax demand as a condition for remand.

4. Mr. V. Prashanth Kiran, learned Government Advocate, accepts notice for the respondents. He points out that principles of natural justice were complied with by issuing intimation dated 03.08.2022, show cause notice dated 18.11.2022 and by offering a personal hearing.

5. On examining the impugned order, it is evident that the tax proposal was confirmed because the petitioner did not respond to the show cause notice or appear at the personal hearing. Since the petitioner was not heard before the order was issued and the petitioner asserts that he was unaware of proceedings, the interest of justice warrants reconsideration albeit by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 20.04.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand within 15 days from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is permitted to reply to the show cause notice. On receipt of such

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 a copy of the petitioner's reply.

7. In view of the relevant assessment order being quashed, the recovery notice is also quashed and the bank attachment is raised. All contentions are left open to the petitioner in the course of remanded proceedings.

8. 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
klt

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SENTHILKUMAR RAMAMOORTHY,J.

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