IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16566 of 2024 and
W.M.P.Nos.18174 to 18176 of 2024

Tvl. RSM Traders,
Rep. by its Proprietor Mr.Shridhar,
No.51, Badrian Street,
Parrys, Chennai - 600 001. ... Petitioner

-vs-

1. The Deputy State Tax Officer-2,
Kothawalchavadi Assessment Circle,
Integrated Commercial Tax Office Complex,
Room No.327, Elephant Gate Bridge Road,
Chennai-600 003.

2.The Deputy Commissioner (ST),
GST- Appeal, Chennai – II,
PAPJM Annexe Building,
3rd Floor, Greams Road,
Chennai 600 006.

3.The Branch Manager,
Kotak Mahindra Bank - GN Street Branch,
No.185, G N Street, I Floor, Chennai 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records of the impugned order passed in GSTIN 33BPWPS8766P1ZE /2017-18 dated 07.12.2023 on the file of the First Respondent along with the consequential DRC-07 Order under Section 73, Ref No. ZD331223039735J dated 07.12.2023 on the file of the First Respondent and quash the same as illegal, arbitrary and against the principles of natural justice and against the law.

For Petitioner : Mr.Poojesh J.

For R1 & R2 : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order in original dated 07.12.2023 is challenged on the ground that the petitioner was not provided a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that the show cause notice and other communications were uploaded in the "View Additional Notices and Orders" tab on the GST portal and not communicated to the petitioner through any other mode. Since GST compliances had been entrusted to an accountant and such accountant did not keep the petitioner informed about proceedings, the petitioner asserts that he could not participate in proceedings culminating in the impugned order.

2. Learned counsel for the petitioner submits that the confirmed tax proposal relates to a mismatch between the petitioner's GSTR 3B return and the auto-populated GSTR 2A. He further submits that a sum of Rs.30,693/- was recovered from the petitioner's account in the Kotak Mahindra Bank, after the order in original was issued. He further submits that this amount represents about 20% of the disputed tax demand. Thereafter, he submits that the petitioner carried the matter in appeal before the appellate authority by remitting an additional 10%. He seeks another opportunity to contest the tax demand on merits.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for respondents 1 & 2. She submits that principles of natural justice were complied with by issuing intimation dated 15.05.2023, show cause notice dated 26.09.2023 and by a personal hearing notice dated 24.11.2023.

4. On examining the impugned order, it is clear that the confirmed tax proposal pertains to a mismatch between the petitioner's GSTR 3B return

and the auto-populated GSTR 2A. Such tax proposal was confirmed without hearing the petitioner on the ground that the petitioner failed to reply to the show cause notice. By taking into account the assertion that such non participation was on account of being unaware of proceedings, reconsideration is necessary. In this regard, it should be recognised that a sum of Rs.30,693/-, which represents about 20% of the disputed tax demand, was recovered from the petitioner's bank account. Subsequently, the petitioner remitted a further 10% while presenting a statutory appeal. To that extent, the revenue interest stands secured.

5. In the facts and circumstances outlined above, the impugned order dated 07.12.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice 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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