



W.P.No.17270 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17270 of 2024 and
W.M.P.Nos.19055 & 19056 of 2024

Tvl. Thirunavukarasu Shankar

... Petitioner

-VS-

The State Tax Officer,
Nanganallur Assessment Circle,
Integrated Commercial Taxes Building,
Room No.224, 2nd floor,
Nandanam, Chennai-600 035.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondent Order in GSTIN 33ASJPS1932Q1Z6/2017-18 along with order in DRC07 in Ref.No. ZD331223236424T impugned proceedings dated 28-12-2023 and quash the same as per the law laid down by this Hon'ble Court judgment in the case of Sri Shanmuga Hardwares Electricals Vs The State Tax Officer in W.P.No.3804 of 2024 dated 20-02-2024.

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For Petitioner : Mr.P.V.Ravi Kumar

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For Respondent : Mr.T.N.C. Kaushik, AGP (T)

ORDER

An assessment order dated 28.12.2023 is assailed on the ground that the petitioner's reply and the annual return filed by the petitioner were not taken into consideration.

2. The petitioner is a trader in tyres and tubes. Upon receipt of show cause notice dated 20.09.2023, the petitioner filed reply dated 20.10.2023. By such reply, the petitioner stated that an error was committed while filing GSTR 3B and that available Input Tax Credit (ITC) was not claimed. It is further stated that this error was rectified while filing the annual return in Form GSTR 9. Therefore, the petitioner requested the respondent to take into consideration the unclaimed ITC and make the necessary adjustments. The impugned order was issued in these circumstances.

3. Learned counsel for the petitioner referred to the above mentioned reply and to the affidavit in support of the writ petition. He submits that



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even after adjusting for the tax liability, there is an excess amount of Rs.73,199/- available in the electronic credit ledger of the petitioner. He further submits that these aspects were not duly taken into consideration and that reconsideration is necessary. Without prejudice to the above contention, learned counsel submits that the petitioner is willing to pay 5% of the disputed tax demand as a condition for remand.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 20.09.2023 and by taking into account the petitioner's reply.

5. On perusal of the impugned order, it is recorded therein that the tax payer's reply is not acceptable. The respondent failed to take note of the fact that the petitioner had claimed eligible ITC in the annual return. Therefore, reconsideration is necessary by putting the petitioner on terms.

6. For reasons aforesaid, the impugned order dated 28.12.2023 is set aside on condition that the petitioner remits 5% of the disputed tax demand



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as agreed to within a period of three weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit an additional reply within the aforesaid period. Upon receipt of such additional reply and upon being satisfied that 5% 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 a period of three months from the date of receipt of the additional reply from the petitioner. In view of the assessment order being set aside, the bank attachment is raised.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

12.07.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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