IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.19585 of 2024
and W.M.P.Nos.21448 and 21449 of 2024

Tvl.Sarathy Geo-Tech & Engineering Services Pvt. Ltd.,
No.16, Cenotaph Road,
Represented by Mrs.Anupama Parthasarathy
Teynampet, Chennai - 600 018. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Nandanam Assessment Circle,
Commercial Taxes Department,
No.46, III Floor, Greenways Road,
Chennai - 28. ... Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to call for the records leading to the issuance of Order-in Original GSTIN/33AALCS4555N1ZT/2017-2018 reference No.ZD331223186503M, dated 23.12.2023 for the year 2017-18 by the respondent herein and quash the same and direct to consider the matter afresh, after giving full and fair opportunity to the petitioner to submit its reply and after affording opportunity of personal hearing to the petitioner.

For Petitioner : Mr.R.Siva Kumar

For Respondent : Mrs.K.Vasanthamala
Government Advocate (T)

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Mandamus, to call for the records leading to the issuance of Order-in Original GSTIN/33AALCS4555N1ZT/2017-2018 reference No.ZD331223186503M, dated 23.12.2023 for the year 2017-18 by the respondent herein and quash the same and direct to consider the matter afresh, after giving full and fair opportunity to the petitioner to submit its reply and after affording opportunity of personal hearing to the petitioner.

2. The learned counsel for the petitioner submits that on 09.09.2023, the petitioner was served with a pre-show cause notice Form DRC-01A, Intimation of Discrepancies of mismatch of ITC in GSTR 3B and GSTR-2A. It is alleged that the Taxpayer has claimed excess claim of ITC of Rs.15,15,865.24 for the year 2017-2018. However, the petitioner failed to submit his reply to the show cause notice dated 17.09.2023 and on 28.09.2023 the respondent issued DRC-01 for the year 2017-2018 mismatch of ITC claim

through GSTR 3B and it was mentioned that the reply to the notice was not received within the prescribed period for the earlier show cause notice and hence, the DRC 01A notice is converted as DRC-01. Again, the petitioner was served with reminders on 30.11.2023 and 21.12.2023. However, the petitioner failed to submit its reply, the respondent has passed an order under Section 73 with Form GST DRC-07 for Rs.15,15,865.24.

3. He further submits that the entire communications were uploaded in web portal and hence, the same was not aware of the same and without affording an opportunity of personal hearing, the respondent passed the impugned order, which is violation of principles of natural justice. Hence, the impugned order may be set aside and remand the matter to the respondent for re-consideration.

4. The learned Government Advocate for the respondent would submit that the notices and orders were issued through the GST Portal and hence, the Petitioner cannot complain of the breach of principles of natural justice. However, he would fairly submit that if any order is passed by this Court, the same will be complied with by the respondents.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (T) appearing for the respondent and perused the materials placed before this Court.

6. Considering the facts that all the notices were uploaded in the web portal and therefore, the petitioner had no occasion to view the said column and the impugned order was passed without affording an opportunity to the petitioner to establish his case before the authorities concerned, which is clear violation of principles of natural justice, this Court is of the view that no order can be passed without providing sufficient opportunities to the petitioner. Hence, the impugned order is liable to be set aside.

7. Accordingly, the impugned order passed by the respondent dated 23.12.2023 is set aside on condition that the petitioner shall deposit 10% of the disputed tax demand within a period of four (4) weeks from the date of receipt of a copy of this order. While setting aside the impugned order, this Court is inclined to remand the matter to the respondent for consideration and accordingly, the matter is remitted back to the respondent. The petitioner is directed to file their reply within a period of two (2) weeks and on receipt of the

reply filed by the petitioner, the respondent shall fix a date for personal hearing by sending a physical notice to the petitioner providing 14 days time and thereafter, pass orders on merits and in accordance with law.

With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

19.08.2024

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To

The Assistant Commissioner (ST),
Nandanam Assessment Circle,
Commercial Taxes Department,
No.46, III Floor, Greenways Road,
Chennai - 28.

KRISHNAN RAMASAMY, J.
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