IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.08.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18560 of 2024
and W.M.P.No.20347 of 2024

Tvl. Shiva Shakthi Engineering Works,
Represented by its Proprietor, Palani Madhanagopal,
No.11, 2nd Palla Street,
Vyasarpadi, Chennai 600 039. ... Petitioner

-vs-

The Deputy State Tax Officer-I,
Washermenpet Assessment Circle, Room No.207,
No.32, 1st Floor, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building,
Chennai (North) Division,
Vepery, Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in Reference No. ZD331223197690E dated 26.12.2023 and quash the same and consequently direct the respondent to given an opportunity of personal hearing.

For Petitioner : Mr.Syed Abdul Wakeel
for Mr.P.Suresh Babu

For Respondent : Mr.G.Nanmaran, Spl. GP

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ORDER

An order in original dated 26.12.2023 is challenged in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that he is a dealer carrying on business on a very small scale and that he is not conversant with the GST portal. Consequently, it is stated that he had engaged a consultant and that such consultant did not inform him about the show cause notice and other communications. Immediately after coming to know of the order, it is stated that an appeal was lodged, but the said appeal was not entertained because it was beyond the condonable period.

2. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to the availment of Input Tax Credit in respect of IGST in the GSTR 3B returns for September in the assessment period 2022-23. Upon realizing the mistake, he submits that Input Tax Credit was reversed to the extent of Rs.4,73,810/- and that the same is reflected in the GSTR 3B return for March in the same assessment year. Since the petitioner could not participate in proceedings, he points out that this could not be brought to the notice of the respondent. He also submits that a sum of Rs.6,57,647/- was appropriated from the petitioner's bank account on 05.04.2024.

3. Mr.G.Nanmaran, learned Special Government Pleader, accepts notice for the respondent. He submits that pursuant to a scrutiny of returns, ASMT 10 notice dated 09.02.2023 was issued. He

also submits that principles of natural justice were complied with by issuing show cause notice dated 17.08.2023 and a personal hearing notice dated 12.10.2023.

4. The petitioner has placed on record the GSTR 3B returns for September and March 2022-23. On examining these two returns, it appears *prima facie* that the entire Input Tax Credit availed of in September was reversed in March 2022-23. In the affidavit, the petitioner has asserted that a sum of Rs.6,57,647/- was appropriated from his bank account on 05.04.2024. This amount matches the total demand, including interest and penalty. As such, revenue interest is fully secured at this juncture. These facts and circumstances justify a remand.

5. Therefore, impugned order dated 26.12.2023 is set aside and the matter is remanded to the respondent for re-consideration. The petitioner is permitted to submit a reply to the show cause notice

within a period of ***fifteen days*** from the date of receipt of a copy of this order. Upon receipt thereof, the 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 the petitioner's reply. For the avoidance of doubt, it is made clear that the sum of Rs.6,57,647/-, which was appropriated from the petitioner's bank account, shall abide by the outcome of the remanded proceedings.

6. W.P.No.18560 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.20347 of 2024 is closed.

01.08.2024

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

SENTHILKUMAR RAMAMOORTHY,J

rna

To

The Deputy State Tax Officer-I,
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