IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **31.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18247 of 2024
and W.M.P.Nos.20032, 20036 & 20037 of 2024

M/s.Sagaya Annai Associates,
A Partnership Firm represented by its Partner
Mr.YSP Balraj 1/68, SA Complex,
Bangalore High Road, Mambakkam,
Kancheepuram District - 602 105. ... Petitioner

-vs-

1. Commercial Tax Officer,
Sriperambudur, Kancheepuram.

2.Assistant Commissioner (ST),
Sriperambudur Assessment Circle,
4/209, Bangalore Chennai Highway,
Varadarajapuram, Nazarathpet,
Chennai 600 123.

3.Deputy Commissioner (ST),
Kancheepuram Zone,
1st Floor, Commercial Taxes Building,
Collectorate Campus, Kancheepuram 631 501. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus (i) calling for the records of the Form DRC-07 dated 31.12.2023 passed by second respondent, Assistant Commissioner (ST), Sriperambudur Assessment Circle with respect to the petitioner's GSTIN 33ABSFS5009E1Z6 and quash the same and direct the Respondents to update the system records as per the final GST Returns filed by the petitioner in Form GSTR-3B with respect to the Months of August 2017, October 2017, November 2017, December 2017, January 2018 and March 2018; (ii) calling for the records of the Form DRC-01 dated 28.09.2023 issued by the Second Respondent Assistant Commissioner (ST), Sriperambudur Assessment circle with respect to the petitioner's GSTIN 33ABSFS5009E1Z6 and quash the same and direct the Respondents not to initiate any recovery proceedings against the petitioner.

For Petitioner : Mr.Prasanna Venkat
for M/s.APR Associates

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

ORDER

An order in original dated 31.12.2023 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 the show cause notice and other communications were not served on the petitioner but merely uploaded on the GST portal. It is further stated that the petitioner became aware of the impugned order only when the bank informed the petitioner about the impugned order.

2. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to reverse charge liability declared in the GSTR 3B returns of the petitioner. By referring to the petitioner's GSTR 3B returns for the relevant months, learned counsel contends that Input Tax Credit (ITC) was not claimed in respect of inward RCM supplies. Without prejudice, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. He submits that principles of natural justice were complied with by issuing show cause notice dated 28.09.2023 and by offering a personal hearing.

4. On examining the impugned order, it is evident that the tax proposal was confirmed because of the tax payer's failure to reply to the show cause notice. By taking into account the assertion that such non participation was on account of not being aware of proceedings, the interest of justice warrants reconsideration subject to putting the petitioner on terms.

5. For reasons aforesaid, the impugned order dated 31.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the 2nd 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.

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

31.07.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J

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