IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 31.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18605 of 2024
and W.M.P.Nos.20396 & 20397 of 2024

M/s.Grace Metal Stores
Represented by its Proprietor,
Mr.Deva Sigamani,
18, Malaiappan Street, Dhasari Batma Nagar,
Maduravoyal, Chennai,
Tamil Nadu 600 095. ... Petitioner

-vs-

The Commercial Tax Officer / State Tax Officer
Koyambedu Assessment Circle,
1st Floor, Integrated GST Buildings,
Chennai Bangalore Highway, Varadarajapuram,
Nazarathpet, Poonamallee, Chennai 600 123. ... 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 leading to the issuance of Impugned Order reference No. ZD330224021785N dated 05.02.2024 Form GST DRC-07, along with connected proceedings GSTIN / 33AKRPD3600L2Z9/2018-2019 dated 05.02.2024, 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.T.C.Prakash

For Respondent : Mr.V.Prashanth Kiran, GA (T)

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ORDER

An order in original dated 05.02.2024 is assiled on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. Upon receipt of intimation dated 04.03.2023, the petitioner replied on 08.04.2024 and stated that the goods were purchased in a bona-fide manner and that the supplier remitted taxes in respect thereof. The petitioner also enclosed copies of the relevant invoices. Thereafter, show cause notice dated 22.11.2023 was issued. In view of the long interval between the intimation and show cause notice, it is stated that the petitioner did not notice the show cause notice which was uploaded on the common portal. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to alleged purchases from a non-existent supplier. He submits that the supplies were genuine and that the petitioner is in possession of the relevant tax invoices, e-way bills, proof of payment of taxes by the petitioner and proof of payment of by the supplier. On instructions, learned counsel submits that the petitioner agrees to remit 15% of the disputed tax demand as a condition for being provided another opportunity.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing intimation dated 04.03.2023, show cause notice dated 22.11.2023 and by taking into account the tax payer's reply dated 14.08.2023. He also points out that the tax payer had responded to the intimation uploaded on the portal and cannot contend that he was unaware of the show cause notice.

4. On examining the impugned order, it is clear that taxes were paid by the supplier concerned because the order records that payment by the supplier was reflected in the auto populated GSTR 2A. The petitioner has placed on record the reply to the intimation and such reply indicates that the tax invoices were enclosed. Learned counsel submits that all relevant e-way bills are available. He also submits that proof of payment of taxes by the petitioner to

the supplier is available. Undoubtedly, the petitioner is also under an obligation to establish movement, including receipt of goods, in terms of Section 16(2)(d) of applicable GST enactments. Nonetheless, in the over all facts and circumstances, it is just and necessary to provide an opportunity to the petitioner to establish the above.

5. For reasons aforesaid, impugned order dated 05.02.2024 is set aside on condition that the petitioner remits 15% of the disputed tax demand as agreed to within ***fifteen days*** from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit a reply to the show cause notice. Upon receipt of the petitioner's reply and on being satisfied that 15% 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 ***three months*** from the date of receipt of the petitioner's reply.

6. W.P.No.18605 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.20396 and 20397 of 2024 are closed.

31.07.2024

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

To

The Commercial Tax Officer / State Tax Officer
Koyambedu Assessment Circle,
1st Floor, Integrated GST Buildings,
Chennai Bangalore Highway, Varadarajapuram,
Nazarathpet, Poonamallee, Chennai 600 123.

SENTHILKUMAR RAMAMOORTHY,J

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