IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **31.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18808 of 2024
and W.M.P.Nos.20638 & 20641 of 2024

Tvl. SMS Trading Company,
Represented by its Proprietor Mrs.Sagunthala Senthilkumar,
No.37/1, Perumal Koil Street,
Erode, Tamilnadu 638 001,
GSTIN: 33BQWPS9038M2ZQ ... Petitioner

-vs-

The State Tax Officer,
O/o The Sales Tax Officer,
Commercial Taxes Department,
Mettur Road, Assessment Circle,
Erode, Tamilnadu. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in its impugned proceedings for the

Assessment year 2017-18 in GSTIN: 33BQWPS9038M2ZQ/2017-2018 dated 16.11.2023 and the consequential DRC-07 order bearing Ref. No: ZD331123098381L dated 16.11.2023 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.C.Harsha Raj, AGP (T)

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ORDER

An order dated 16.11.2023 imposing late fee and penalty for belated filing of the annual return is challenged in this writ petition. The petitioner asserts that she was unable to participate in proceedings culminating in the impugned order because the show cause notice and other communications were merely uploaded on the GST portal and not communicated to the petitioner through any other mode.

2. Learned counsel for the petitioner submits that Section 73 of applicable GST enactments cannot be invoked for the determination of late fee for belated filing of returns. She also submits that Section 125 of applicable GST enactments is not attracted in the present case. Without prejudice, she submits that the petitioner agrees to remit 10% of the late fee component in the impugned order as a condition for remand.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. After pointing out that principles of natural justice were complied with by issuing intimation dated 26.11.2022 and show cause notice dated 27.01.2023, he also submits that the power to levy late fee is conferred by Section 47(2) of the GST enactments. Even assuming that a wrong provision was cited in the impugned order, he submits that the same does not vitiate the

proceedings in view of Section 47 and Section 160.

4. On perusal of the impugned order, it is evident that the fee proposal was confirmed because the tax payer failed to avail of the opportunity to respond to the show cause notice or avail of the amnesty scheme. The petitioner asserts that non participation was on account of not being aware of proceedings. In these circumstances, albeit by putting the petitioner on terms, re-consideration is necessary in the interest of justice.

5. Therefore, impugned order dated 16.11.2023 is set aside on condition that the petitioner remits 10% of the late fee component in the impugned order 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 10% of the late fee

component 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.18808 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.20638 and 20641 of 2024 are closed.

31.07.2024

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

To

The State Tax Officer,
O/o The Sales Tax Officer,
Commercial Taxes Department,
Mettur Road, Assessment Circle,
Erode, Tamilnadu.

SENTHILKUMAR RAMAMOORTHY,J

rna

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