IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.19461 of 2024
and
W.M.P.Nos.21312 & 21314 of 2024

M/s. Mohanlal Jewellers,
Represented by its Proprietor,
Shri. Mukanchand Mohanlal Khatri. ... Petitioner

Versus

The Deputy State Tax Officer,
Peddunaickenpet Assessment Circle,
No 32, Integrated Commercial Taxes And Registration Building,
Room No 208, Elephant Gate Bridge Road,
Vepery, Chennai 600 003. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records of the respondent in passing the impugned order bearing reference no. GSTIN 33DRBPM7931K1ZK / 2020-21 dated 20.12.2023 along with the form DRC - 07 and quash the same as the same lacks jurisdiction, since the same has been passed in in contravention of Sections 7, 9, 11, 73, 169 read with Rule 142 of CGST Rules, 2017 and Articles 14, 19(1)(g) and 265 of the Constitution.

For Petitioner : Mr. Jayesh B. Dolia, for Aiyar and Dolia
For Respondent : Mr. C. Harsha Raj, Additional Government Pleader

ORDER

By this writ petition, order in original dated 20.12.2023 is assailed on the ground that the petitioner was not provided a reasonable opportunity to contest the tax demand on merits.

2. The petitioner asserts that GST compliances were entrusted to a manager. Such manager passed away on 12th August 2023. Consequently, it is stated that the petitioner was unaware of the show cause notice and other communications, which were uploaded on the GST portal and not communicated to the petitioner through any other mode.

3. Learned senior counsel for the petitioner submits that the tax proposals relate to allegedly ineligible Input Tax Credit, RCM liability and 'Nil' rated turnover. He also submits that the petitioner would be in a position to explain each issue satisfactorily if provided an opportunity. He refers to communication dated 02.07.2024, which was submitted after the impugned order in original was issued. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand. He also submits that a sum of Rs.10,05,000/-

lakhs was remitted towards the disputed tax demand on 15.07.2023 and that this sum may be adjusted against 10% of the disputed tax demand.

4. Mr. C. Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. He points out that principles of natural justice were complied with by issuing intimation dated 10.07.2023, show cause notice dated 21.08.2023 and by issuing about three reminders.

5. On perusal of the impugned order, it is evident that the tax proposals were confirmed on account of the fact that the petitioner failed to reply to the show cause notice. By taking into account the assertion that such non-participation was on account of the demise of the manager concerned, the interest of justice warrants reconsideration subject to putting the petitioner on terms.

6. For reasons aforesaid, impugned order dated 20.12.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand after giving proportionate credit to amounts remitted earlier by the petitioner. It is

made clear that any short fall shall be made good by the petitioner within 30 days from the date of receipt of a copy of this order. Within the said period, the petitioner is directed to submit a reply to the show cause notice. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand was received (after giving proportionate credit to amounts earlier remitted), 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.

7. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

25.07.2024

Index :No
Speaking Order : Yes
Neutral Case Citation: No

klt

To

The Deputy State Tax Officer,
Peddunaickenpet Assessment Circle,
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SENTHILKUMAR RAMAMOORTHY,J.

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