IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.19574 of 2024
and W.M.P.Nos.21430 and 21431 of 2024

Shagai Logistiques Pvt. Ltd.,
Rep. by its Director, Soosai Antony Alagu Kumar,
No.89, Old No.45, 4th Floor,
Marina Tower,
Thambu Chetty Street,
Chennai - 600 001. ... Petitioner

Vs.

The State Tax Officer/ Commercial Tax Officer,
Harbour Assessment Circle,
No.327, 3rd Floor, Integrated C.T.Buildings,
Basin Bridge Road, Vepery,
Chennai - 600 003. ... Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records of the respondent herein in impugned order in GSTIN-33AAUCS8334E1Z2/2017-18, dated 22.12.2023 and the consequential DRC 07 passed in Ref.No.ZD331223181605L dated 23.12.2023 and quash the same.

For Petitioner : Mr.G.Vardini Karthik

For Respondent : Mrs.K.Vasanthamala
Government Advocate (Tax)

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorari, to call for the records of the respondent herein in impugned order in GSTIN-33AAUCS8334E1Z2/2017-18, dated 22.12.2023 and the consequential DRC -07 passed in Ref.No.ZD331223181605L dated 23.12.2023 and quash the same.

2. The contention of the petitioner is that the respondent had initiated scrutiny proceedings against the petitioner for the period 2017-18 and issued ASMT-10 dated 03.05.2023. Subsequently, the respondent issued show cause notice dated 26.09.2023 and consequent Form DRC -01 in the portal and the petitioner has also filed his detailed reply. The personal hearing date was fixed on 06.10.2023. However, the petitioner did not appear. Thereafter, the

respondent passed the impugned order dated 22.12.2023 and issued Form GST DRC -07, dated 23.12.2023 determining a tax demand of Rs.14,69,150/- along with interest and penalty totaling to Rs.30,97,765/-. In the meanwhile, the respondent issued Form GST DRC - 13 to the following Bankers:-

1. Central Bank of India, 54, Beach Road, Fairilight, Tuticorin
2. Tamilnad Mercantile Bank, Beach Road, Tuticorin
3. Axis Bank, Palayamkottai High Road, Tuticorin
4. HDFC Bank, Palai Road, West Tuticorin

3. The respondent had initiated recovery proceedings and had issued notices to the banks, where the petitioner was holding its account and had marked lien on the petitioner's account for an amount of Rs.30,97,765/- and deposit the same into the Government's account for the GST dues of the petitioner. In response to the recovery proceedings initiated, the Axis Bank vide its communication dated 31.05.2024 to the respondent, issued a demand draft in favour of the respondent, for the entire balance available in the account of the petitioner on 31.05.2024 to the tune of Rs.14,71,538.39 which covers more than the tax determined in the Form GST DRC-07. Further, the respondent had instructed the banks to freeze the operation of the account of the petitioner until further information. Until these recovery proceedings were initiated, the

petitioner was completely unaware of the impugned order. It was only after the appropriation of the above amount from the account of the petitioner held with Axis Bank, the impugned order dated 22.12.2023 and the consequential Form GST DRC -07, dated 23.12.2023 was noticed by the petitioner. Hence, he submits that the petitioner was not given sufficient opportunities to put forth their case, thereby violating the principles of natural justice. He would also submit that there is a scheme as per Rule 128 of the Income Tax Rules, to be availed by the petitioner and hence, one more opportunity may be given to the petitioner to avail the benefit under Rule 128 of the Act.

4. Per contra, the learned Government Advocate for the respondent would submit that the petitioner was issued with a show cause notice dated 26.09.2023 and Form GST DRC-01 in the portal. Even the personal hearing was fixed on 06.10.2023, on that day also, the petitioner has not appeared. Thereafter only, the respondent proceeded and passed the impugned order dated 22.12.2023 and issued Form GST DRC -07, dated 23.12.2023. Therefore, the petitioner cannot complain of the breach of principles of natural justice.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials placed before this Court.

6. In the present case, Form DRC-01 was issued and the petitioner filed a detailed counter. When the personal hearing opportunity was provided, he has not appeared. In those cases, the respondent ought to have granted one more opportunity. However, the respondent has failed to do the same. In this circumstance, both learned counsel for the petitioner submitted that there is a scheme available under Rule 128 of the Act and the petitioner intended to avail the same in the event the impugned order is setting aside and remanding the matter to the appellate authority for consideration after providing opportunity of personal hearing to give quietus to the present dispute. Taking into consideration these aspects, this Court feels that it would be appropriate to give one more opportunity of personal hearing to the petitioner. Hence, the impugned order as well as the attachment order passed by the respondent dated 22.12.2023 are set aside. While setting aside the impugned order as well as the attachment order, this Court is inclined to remand the matter to the respondent for consideration. Accordingly, the matter is remitted back to the respondent for

consideration and the respondent is directed to provide opportunities of personal hearing by sending physical notice by providing 14 days time.

With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

05.08.2024

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To

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KRISHNAN RAMASAMY, J.
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