IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.19624 of 2024
and W.M.P.Nos.21480 & 21481 of 2024

T.Balasubramanian ... Petitioner

-vs-

1. The Joint Commissioner (ST),
North Division, No.32,
Elephant Gate Bridge Road,
(Off Wall Tax Road), Vepery, Chennai-600 003.

2.The Office of the Assistant Commissioner (ST),
Washermenpet Assessment Circle,
Room No.206, 2nd Floor,
Integrated Building for Commercial Taxes,
No.32, Elephant Gate Bridge Road,
(Off Wall Tax Road),
Vepery, Chennai – 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the entire records of the respondent passed in GSTIN: 33AAUPB0065C1Z8 dated 26.12.2023 passed by the 2nd respondent for the financial year 2017-2018 vide Demand ID. No. ZD331223204484V and to quash the assessment order passed therein and direct the respondent herein to pass an order afresh after affording opportunity to the petitioner to explain their case and to produce connected and supporting document in support of the case.

For Petitioner : Mr.Manojin H.

For Respondents : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order in original dated 26.12.2023 is assailed 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 uploaded on the GST portal, but not communicated to the petitioner through any other mode. In view of not being aware of proceedings, it is stated that the petitioner did not participate in the same.

2. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to a mismatch between the petitioner's GSTR 3B returns and the auto-populated GSTR 2A. If provided an opportunity, he submits that the petitioner would be in a position to establish that only eligible Input

Tax Credit (ITC) was claimed. He points out that a sum of Rs.13,12,372.96 was appropriated from the petitioner's bank account pursuant to the order impugned herein.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondents. She submits that a notice in ASMT 10 was issued upon scrutiny of returns. She also points out that the show cause notice dated 14.09.2023 and a personal hearing notice dated 21.09.2023 were issued. She points out that the appropriation of Rs.13,12,372/- was in respect of three assessment orders and not only the order impugned herein.

4. On examining the impugned order, it is evident that the tax proposal was confirmed because the tax payer failed to reply to the show cause notice or avail of the personal hearing opportunity. By taking note of the assertion that such non participation was on account of not being aware of proceedings, the interest of justice warrants reconsideration. In this connection, it should be noticed that a sum of Rs.13,12,372.96 was appropriated from the petitioner's bank account. This sum is more than 10%

of the tax demand in respect of not only this assessment period but the two other relevant assessment periods.

5. Therefore, the impugned order dated 26.12.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice within 15 days from the date of receipt of a copy of this order. Upon receipt of such reply, 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. In view of the assessment order being set aside, the bank attachment is raised.

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

24.07.2024

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

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To

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