IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.25220 of 2024
and
W.M.P.Nos.27543 and 27544 of 2024

Tvl.Sendur Pandian Shanmuga Sundaram,
Prop. Sri Sastha Engineering Company,
No.18, P.K.Pudur, Gudimangalam,
Madanthukulam (TK) - 642 201. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Udumalpet North Assessment Circle,
Udumalpet - 642 126. ... 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 in his proceedings in GST :33AVKPS5271N1ZX/2019-2020, dated 30.09.2023 and quash the same.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.G.Nanmaran
Special Government Pleader (Taxes)

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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 in his proceedings in GST :33AVKPS5271N1ZX/2019-2020, dated 30.09.2023 and quash the same.

2. The learned counsel for the petitioner submits that the petitioner is doing contract work of maintenance and repair work of Wind Mill to the Government Department, Companies and Corporations. The petitioner is a registered dealer under the GST Act. The respondent has issued a Notice in GST DRC 01 dated 11.11.2022 stating that there is turnover difference between GSTR 3B and GSTR 1 and ITC mismatched between GSTR 3B and GSTR 2A. The respondent has proposed levy of Rs.1,17,88,127/- and interest of Rs.18,79,851/-. Since the petitioner has no knowledge and access to the GST web portal, he could not file the reply. Therefore, the respondent has confirmed the proposal by proceedings dated 30.09.2023. Immediately, the petitioner appeared before the respondent and explained about the turnover.

3. The learned counsel for the petitioner further submits that there is no difference in turnover as stated by the respondent. The petitioner has also paid interest of Rs.10,06,384/- vide Form GST DRC 03 dated 04.02.2021. The above interest paid was not given credit. Even the petitioner has appeared before

the respondent and produced the relevant documents, the respondent has not considered the same. In this circumstance, without considering the reply filed by the petitioner, the respondent passed an *ex parte* order. He further submits that the petitioner is ready to deposit 10% of the disputed tax demand. Hence, the impugned order passed by the respondent may be set aside.

4. The learned Special Government Pleader for the respondent submits that though the notices were uploaded by the respondent in the GST web portal, the petitioner had failed to appear before the respondent for personal hearing and has also not filed a reply to the notices issued. However, he fairly submits that if any order is passed by this Court, the same will be complied with by the respondent.

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

6. Considering the facts that all the notices and orders were

uploaded in the common portal and therefore, the petitioner had no occasion to view the said column and the impugned order was passed without affording an opportunity to the petitioner to establish his case before the authorities concerned, which is clear violation of principles of natural justice, this Court is of the view that no order can be passed without providing sufficient opportunities to the petitioner. Hence, the impugned order is liable to be set aside.

7. Accordingly, the impugned order passed by the respondent dated 30.09.2023 is set aside on condition that the petitioner shall deposit 10% of the disputed tax demand within a period of four (4) weeks from the date of receipt of a copy of this order. While setting aside the impugned order, this Court is inclined to remand the matter to the respondent for fresh consideration and accordingly, the matter is remitted back to the respondent. The petitioner is directed to file his reply within a period of two (2) weeks and on receipt of the reply filed by the petitioner, the respondent shall fix a date for personal hearing by sending a physical notice to the petitioner providing 14 days time and thereafter, pass orders on merits and in accordance with law.

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

29.08.2024

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To

The Assistant Commissioner (ST),
Udumalpet North Assessment Circle,
Udumalpet - 642 126.

KRISHNAN RAMASAMY, J.
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