IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.09.2024**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

WP No.27688 of 2024 &
WMP.Nos.30206 & 30210 of 2024

M. Rajendran ... Petitioner

vs.

1. The Deputy Commissioner (ST),
GST-Appeal, Chennai,
3rd Floor, C.T.Annexe Building,
No.1, Greams Road,
Chennai 600 006.
2. The State Tax Officer,
Thirukazhukundram Assessment Circle,
No.42 – Wahab Nagar,
Thirukazhukundram 603 109.
3. The Branch Manager,
State Bank of India,
Kalpakkam Branch, 8th Avenue,
DAE Township, Kalpakkam 603 102.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent demand order made in No.ZD330424219624L, dated 27.04.2024 and quash the same and consequently direct the respondent to give an opportunity of personal hearing.

For Petitioner : Mr. P. Suresh Babu

For Respondents : Mr. T.N.C. Kaushik,
AGP (Taxes) for R1 & R2

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent demand order made in No.ZD330424219624L, dated 27.04.2024 and quash the same and consequently direct the respondent to give an opportunity of personal hearing.

2. The learned counsel for the petitioner submits that the respondent has not communicated the show cause notice in Form GST DRC 01 dated 18.03.2022 as well as the ASMT – 10 notice, dated 07.12.2021 and the notice providing opportunity of personal hearing on 18.04.2022 either through E-mail ID of the petitioner herein or through physical mode of service. Since the 2nd respondent uploeaded notice dated 07.12.2021, show cause notice dated 18.3.2022 in Addl. Notice columns of the portal calling for objections, the petitioner failed to notice the same, however, the 2nd respondent passed impugned order dated 27.04.2024 confirming the notice. The petitioner came to know about the impugned order levying tax, interest and penalty only after the respondent has issued notice to the Bank to

recover the amount and the copy of letter addressed to the bank was also not sent to the petitioner. Pursuant to the notice dated 27.04.2024, the 3rd respondent Bank freezed the petitioner's bank account.

3. He further submitted that immediately an appeal is filed before the Appellate Authority/1st respondent on 03.09.2024 against the demand order, wherein, the petitioner has deposited 10% of the disputed tax amount. The impugned proceedings of the respondent demanding excess claim of input tax credit, interest and penalty and consequent recovery are illegal. The impugned order is nothing but non-speaking order and therefore, the same is liable to be quashed. However, he fairly submitted that the petitioner is ready to remit 5% of the disputed tax amount in addition to that of 10% of the disputed tax amount already paid by him in the appeal.

4. The learned Additional Government Pleader (T) for the respondent would submit that though the notices were uploaded by the respondent in the web portal, the petitioner had failed to appear before the respondent for personal hearing. He would fairly submit that in the appeal filed by the petitioner, already 10% of the disputed tax amount was deposited by the petitioner and now he is ready to deposit 5% of the

disputed tax amount, in which case, 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 Additional Government Pleader (T) appearing for the respondent and perused the materials available on record.

6. Considering the fact that all the notices were uploaded in the portal under the "Additional Notices/Orders" 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 and this Court is of the view that no order can be passed without providing sufficient opportunities to the petitioner. Apart from that, in the appeal filed by the petitioner against the demand order, already the petitioner has deposited 10% of the disputed tax amount. Though the assessment order came to be passed without providing sufficient opportunity to the petitioner, the Appellate Authority has no power to remit the matter back to the Assessing Offier while disposing of the appeal filed by the petitioner. Therefore, this Court feels that it would be appropriate to

provide an opportunity to the petitioner to establish their case before the respondent. Hence, in view of the foregoing discussions, the impugned order is liable to be set aside.

7. Accordingly, the impugned order passed by the respondent dated 27.04.2024 is set aside on condition that the petitioner shall deposit 5% of the disputed tax demand (this 5% of the tax liability is in addition to the 10% of the disputed tax liability already deposited by the petitioner while filing appeal) 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 consideration and accordingly, the matter is remitted back to the respondent. The petitioner is directed to file their reply within a period of two (2) weeks from the date of deposit 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.

8. 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.

23.09.2024

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
msr

To

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KRISHNAN RAMASAMY, J.

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