IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.12.2024**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.36886 of 2024
and
W.M.P.Nos.39842 & 39844 of 2024

Aswin Departmental Stores
Represented by its Proprietor
Ramachandran Viswanathan ... Petitioner

Vs.

1. The State Tax Officer,
(Formerly Known as Commercial Tax Officer,)
Pallavaram: Tambaram: Chengalpattu,
III Floor, Room No.345,
Integrated Regn.Commercial Taxes Building,
Nandanam,
Chennai 600 035.

2. The Deputy Commissioner (ST) (FAC),
Tambaram Zone,
4th Floor, Room No.422,
PAPJM Building,
No.1, Greams Road,
Chennai 600 006.

3. The Branch Manager,

Indian Bank,
No.10, Bashyam Street, Radhanagar,
Chrompet, Chennai 600 044. … Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records in Reference Number : ZD331223135933M/2017-2018 dated 19.12.2023 on the file of the 1st respondent and quash the same and consequently direct the 2nd respondent to defreeze the bank account No.490790133/PAN : AAEPV1690F in DRC-13 bearing GSTIN : 33AAEPV1690F1ZP/2017-2018 dated 31.07.2024 on the file of the 1st respondent .

For Petitioner : M/s.V.Vijayalakshmi

For Respondent : Mr.G.Nanmaran,
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order passed by the first respondent bearing Reference ZD331223135933M/2017-2018 dated 19.12.2023 and consequently direct the 2nd respondent to defreeze the bank account No.490790133/PAN : AAEPV1690F in DRC-13 bearing

GSTIN : 33AAEPV1690F1ZP/2017-2018 dated 31.07.2024 .

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of Retail and Wholesale Trading of Rice, Cereals, pulses and other grocery cosmetics/toiletry items and its registered under the TNGST Act. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was found that there was a mismatch between the GSTR-3B and GSTR-2A. Subsequently, a Summary of Show Cause Notice was issued to the petitioner in Form GST DRC-01 on 27.09.2023 and reminders dated 16.11.2023 and 23.11.2023 and also personal hearing was offered on the same dates. However, the petitioner had not responded to any of the above notices / intimation, nor availed of the opportunity of personal hearing, the impugned order was passed by the first respondent by following the principal of natural justice. Pursuant to the impugned order of the first respondent dated 19.12.2023, the second respondent had proceeded to issue a Statutory Demand Notice in Form DRC-13 dated 31.07.2014, for recover of arrears of tax to the third respondent viz., Indian Bank, Chrompet Branch by freezing the current account bearing No.490790133 of the petitioner's

registered person maintained with the third respondent. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the discrepancy between GSTR 3B and GSTR 2A.

3. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment have been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal. It was further submitted that the petitioner was unable to access the common portal and thus was unable to participate in the adjudication proceedings.

4. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

5. The learned counsel for the petitioner would then place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan,***

Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Special Government Pleader appearing for the respondents does not have any serious objection.

6. In view thereof, the impugned order is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four (4) weeks from the date of receipt of a copy of this order. The impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks from the date of receipt of a

copy of this order, the impugned order shall stand revived. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and bank accounts have been attached. In view of the order passed herein, the bank attachment shall be lifted forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of two weeks from the date of receipt of a copy of this order.

7. This Writ Petition is disposed of with the aforesaid observation and direction. No costs. Consequently, connected miscellaneous petitions are closed.

10.12.2024

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

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<u>To:</u>

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J.SATHYA NARAYANA PRASAD,J.

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