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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.4544 of 2024 and
WMP(MD)Nos.4383 & 4384 of 2024

Tvl.Periyasamy Chandran ... Petitioner

Vs

1.The Deputy State Tax Officer (ST) 1,
Theni -I Circle,
Theni District,
Theni.

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of the first respondent vide GSTIN.33ANAPC4782E1ZG/2019-2020, dated 29.08.2023 and quash the same as illegal and devoid of merits and direct the first respondent to re-do the assessment for the year 2019-2020 after providing reasonable opportunity to the petitioner.

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For Petitioner : Mr.Raja Karthikeyan
For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed as against the order passed by the Deputy State Tax Officer, Theni/ the first respondent in GSTIN. 33ANAPC4782E1ZG/2020-21 dated 06.06.2023 and for a consequential direction to the respondents to redo the assessment for the year 2019-2020 by providing an opportunity to the petitioner.

2.The case of the petitioner is that the petitioner is a registered contractor and he is doing service-maintenance of street lights in the Municipalities of Theni and Dindigul Districts. The petitioner is registered under the GST Act,2017. According to the petitioner, he has executed works to the Kodaikanal Municipality for a sum of Rs.15,14,204/-. However, the Kodaikanal Municipality has wrongly reported the petitioner's turnover in GSTR-7 as Rs.1,79,99,069/-. This is the reason for mismatch between GSTR 7

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and GSTR 1. The grievance of the petitioner is that the respondent without verifying the documents and returns, which are very much available in the web portal has passed the impugned order stating the escaped turnover of the petitioner as Rs.1,64,84,865/-.

3.The learned counsel appearing for the petitioner submits that in most of the cases, the assessees are not aware of the show cause notices and assessment orders due to lack of communication through post. The Department is opting to send the communications only in the web portal, due to which, the dealers came to know about the assessment proceedings only on initiation of recovery proceedings and the related bank attachments. According to the learned counsel, Section 169(3) of the GST Act, 2017 prescribes the mode of communication through post. The learned counsel by relying upon Section 144B of the GST Act, 2017 submits that the Act prescribes sequence of procedure to be followed before issuing the final assessment order. However, it has not been followed by the Department properly. The another contention of the petitioner is that

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the dealers are not acquaintance with the online filing and therefore, they are depending upon the private service providers for doing the same.

4.The learned counsel has relied on the orders passed by this Court in W.P(MD) Nos.24407 and 24408 of 2023, dated 31.10.2023 and submits that the said writ petitions have been filed by this petitioner for the assessment years 2020-2021 and 2021-2022, wherein, this Court has set aside the impugned orders and a direction was issued to the Department to redo the assessment for the relevant period. Therefore, the order impugned in this writ petition is also liable to be set aside.

5.Mr.R.Suresh Kumar, learned Additional Government Pleader, who takes notice for the respondents has raised serious objections that this petitioner is used to upload the returns only through electronic mode and therefore, he cannot plea that the petitioner is not aware of the notice communicated to the petitioner

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through portal. The learned Additional Government Pleader by referring to Rule 142 of TNGST Rules, 2017 submits that the Officer is expected to communicate the notice issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129, a summary thereof through electronic mode in Form GST DRC -01. Therefore, according to the learned Additional Government Pleader, the Department is sending the notices to the tax payers through the electronic mode. The tax payers ought to have verified the portal then and there.

6.In reply, the learned counsel appearing for the petitioner has relied on Section 169 of TNGST Act, 2017 and submits that the Department is uniformly communicating the notice only through electronic mode, instead of opting any other mode as per Section 169 of the Act. The learned counsel further submits that though the returns are filed by the tax payers through online, most of the tax payers have preferred to file their returns through auditors or

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service providers as they are not accustomed with the technology. The service providers, who are rendering service to several tax payers are not expected to follow up with each and every tax payer's account as to whether any communication has been received from the Department. The learned counsel further submits that the Rule 142 referred by the learned Additional Government Pleader is for the enclosures and summary in Form GST DRC -01.

7.This Court considered the rival submissions made and also perused the materials placed on record.

8.The case of the petitioner is that notice sent by the Department through the electronic mode has not been noticed by the petitioner and therefore, he could not reply in time. The petitioner has valid ground to substantiate that there is no mismatch that the Kodaikanal Municipality has wrongly reported the petitioner's turnover in GSTR-7 as Rs.1,79,99,069/-, when the petitioner's actual turnover is of Rs.15,14,204/-. The learned counsel on either side

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have referred to the relevant provisions in the TNGST Act, 2017 to support their claims. For better appreciation, the relevant provisions are extracted as under:-

> 169. (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely
>
> (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
>
> (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
>
> (c) by sending a communication to his e-mail address

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provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any

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communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

Rule142. Notice and order for demand of amounts payable under the Act. -

(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

1 (1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

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(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act 2 whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC? 04.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.

(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned

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makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in

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accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.

9.When option is available to the Department to prefer any mode of communication as per Section 169 of the TNGST Act, 2017, the Department has preferred only electronic mode of communication. Any decision taken by the Department would affect the traders and their business. The Department cannot expect that all the traders/tax payers are accustomed with the portal and they are filing their returns on their own. The intention of the Department must be to promote the trade/traders, rather than curtail the trade. When the Department is conducting an enquiry and they are going to pass some adverse orders based on the enquiry, the Department, in all fairness, shall take a decision after providing sufficient opportunity to the taxpayers. The Department shall work out on the possibility of issuing notice and other communications through

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postal and that too, in a regional language, which certainly enables the tax payers to respond in time and the same will definitely reduce the unnecessary litigations before this Court. Hope, the Department shall consider the fact that all the tax payers are not filing the returns on their own and they are depending upon some service providers for the same.

10.The Government, which is promoting our Tamil language in Tamil Nadu, is taking action against the traders, like carpenters, cooks, vegetable vendors by issuing notice in English language. The object of issuing notice is based on the principles of natural justice. “No one should be punished unheard”. This object can be achieved only when the notices are issued in Regional languages. The invent of recent technology have made it easier on translation. While so, it is not proper on the part of the Department to issue these notices in a mechanical manner with computer generated notices through on line. This will not serve any purpose. This Court once again reiterates that the intention of any

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Government must be to promote the trade and not to curtail the same. While initiating action as against the traders, which would affect them adversely, the Department has to work out the possibility of issuing the notice in a regional language and also through post and phone, text message so that the traders can have the real opportunity. Otherwise, it would be an empty formality.

11.In view of the above, this writ petition is allowed. The impugned order passed by the first respondent inGSTIN. 33ANAPC4782E1ZG/2019-2020, dated 29.08.2023 is set aside and the first respondent shall re-do the assessment for the year 2019-20 by providing an opportunity of hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes
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Note:

Registry is directed to mark a copy of this order to "The Principal

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Chief Commissioner of GST & Central Excise, Tamil Nadu & Puducherry".

To

1.The Deputy State Tax Officer (ST) 1,
Theni -I Circle,
Theni District,
Theni.

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

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B.PUGALENDHI, J.

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Order made in
W.P(MD)No.4544 of 2024 and
WMP(MD)Nos.4383 & 4384 of 2024

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