BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.4744 of 2024
and W.M.P.(MD)Nos.4559 and 4560 of 2024

Sri Magna Store,
Rep. by its Partner S.Mariappan,
No.10/15, Mamundi Vathiyar Lane,
East Masi Street,
Madurai – 625 001. ... Petitioner

versus

State Tax Officer,
Munichalai Road Circle,
Madurai. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN: 33ABKFS3179D1Z5/2019-20 dated 20.06.2023, quash the same and further direct the respondent to pass order afresh after affording an opportunity to the petitioner to explain their case and to produce connected and supporting documents in support of their case.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.A.Baskaran,
Additional Government Pleader

ORDER

The petitioner, a grocery merchant, has filed this writ petition as against the order dated 20.06.2023 passed by the respondent in DRC-07 under Section 73 of TNGST Act, 2017.

2. By the impugned order dated 20.06.2023, the respondent having found that there is a difference of Input Tax Credit between GSTR 3B and GSTR 2A, has imposed penalty at the rate of 10% for the differential amount along with interest at the rate of 18%. This impugned order was passed after issuing a notice in DRC-01 on 12.05.2023 and also after providing an opportunity of personal hearing on 15.06.2023.

3. The learned counsel appearing for the petitioner submits that the petitioner is not an educated person and he was not aware of the notice issued by the respondent through the portal, therefore, he has failed to appear during the enquiry. He further submits that pursuant to

the impugned order dated 20.06.2023, the petitioner's Bank Account was attached and the difference amount together with penalty of 10% and interest have been recovered from the petitioner. He further submits that the petitioner's transactions are all genuine. In fact, the petitioner's sellers have reported their sales in their returns as B to C sales instead of B to B sales and because of this technical mistake, the portal shows mismatch and the respondent has also proceeded with the enquiry by issuing the show cause notice through the portal. Since the petitioner is not acquainted with the portal, he did not know about the notice issued by the respondent and therefore, he has failed to participate in the enquiry. The petitioner is having enough documents to substantiate that there is no mismatch as claimed by the respondent. It is only a technical fault that the petitioner's sellers have not reported their sales in the proper column. Therefore, the learned counsel for the petitioner has requested for a fresh enquiry.

4. Mr.A.Baskaran, learned Additional Government Pleader, who

takes notice for the respondent and submits that the petitioner was issued with a notice dated 12.05.2023 in DRC-01 and he was also directed to produce the documents. However, the petitioner has failed to appear before the enquiry. Therefore, the impugned order was passed on 20.06.2023. Since the petitioner has not paid the amount, his bank account was also attached and the amount was also recovered from that account. Therefore, at this stage, the petitioner's Bank Account cannot be re-open. He further submits that the petitioner had an appeal remedy, but, he has failed to file an appeal in time and has filed this writ petition before this Court.

5. The learned counsel for the petitioner submits that the order of attachment was passed only on 18.11.2023 and only thereafter, the petitioner came to know about the impugned order passed by the respondent on 20.06.2023 and thereafter, the petitioner has collected the impugned order and verified with his Auditor and his sellers and found that there is no discrepancy as claimed by the respondent. He

further submits that the statutory period for filing the appeal is over and he cannot file the appeal.

6. This Court considered the rival submissions made.

7. Though the Traders are filing their returns through the portal, the returns are filed only through their Auditors or Accountants. These Accountants are also having so many customers and therefore, it is not possible for those Accountants and Auditors to follow up the portal about the notices issued by the respondent Department through the portal for their customers.

8. The petitioner, a merchant trader, who is not acquainted with the GST portal, claims that there is no mismatch as claimed by the respondent in GSTR 3B and GSTR 2A. His sellers reported their sales in their returns as B to C instead of B to B sales, which have not been reflected in the portal and the same is projected as mismatch.

9. The petitioner further claims that he is having enough documents that there is no mismatch between GSTR 3B and GSTR 2A and therefore, an opportunity may be provided to him.

10. Considering the facts and circumstances of the case and on the principles of natural justice, this writ petition is disposed of with a direction to the respondent to re-consider the case of the petitioner by providing an opportunity of hearing. The petitioner shall appear before the respondent for enquiry on 12.03.2024 and produce the documents, if any support of his claim. The respondent shall consider the case of the petitioner and take a decision in accordance with law as expeditiously as possible. In the event, if the petitioner's sellers have paid the taxes, the respondent shall revise the impugned order. No costs. Consequently, connected miscellaneous petitions are closed.

29.02.2024

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

To

The State Tax Officer,
Munichalai Road Circle,
Madurai.

B.PUGALENDHI, J.

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W.P.(MD)No.4744 of 2024

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