BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12979 of 2024
and
W.M.P.(MD) No.11517 of 2024

M/s.Ramaswamy Prabhaar
Propietor of M/sRamaswamy Margin
Free Super Market and Textiles,
GSTIN:33BKQPP2059F1Z0
No.27-31, Main Road, Colachel – 629 251. ... Petitioner

Vs.

The State Tax Officer (FAC),
Thuckalay -2 Assessment Circle,
Commercial Taxes Buildings,
Thuckalay. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the respondent in GSTIN:33BKQPP2059F1Z0/2018-19 dated 23.06.2023 passed by the respondent under Section 73 of TNGST Act, 2017 and quash the same as cryptic, barred by limitation, non-speaking, illegal, arbitrary, wholly wihtout jurisdiction and direct the respondent to pass assessment order afresh by following the circular No.183/15/2022-GST [F.No.CBIC-20001/2/2022-GST], dated 27.12.2022.

For petitioner : Mr.M.Sudalaimuthu

For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

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ORDER

This Writ Petition is disposed of at the time of admission after hearing the learned counsel for the petitioner and the Additional Government Pleader for the respondent.

2. The petitioner is before this Court against the impugned order dated 23.06.2023 passed under Section 73 of TNGST Act, 2017 for the assessment year 2018-19.

3. It is the case of the petitioner that the petitioner was unaware of the notice that preceded the impugned order as also the impugned order that can be passed on 23.06.2023.

4. It is further submitted that out of the total tax liability of Rs.

24,55,520/-, the respondent has recovered a sum of Rs.22,83,579/-. To that effect, a reference has been made in para 15 of the affidavit filed in support of this Writ Petition, which reads as under:

> "*15.I submit that now the impugned proceedings have been issued mulcting, by the respondent with huge demand of taxes. The respondent had encashed sum of Rs.22,83,579/- agaisnt the demand raised in the impugned order from both credit ledger and cash ledger during February and May 2024. Therefore, there is every possibility of the respondent resorting to recover the same by coercive methods which if culminated would cause grave damage and prejudice to this petitioner. The petitioner has no means to meet out the illegal demand raised by the respondent and great prujudice and hardship would be caused if the same is sought to be recovered. Unless this Hon'ble Court grants interim stay of all further proceedings of the respondent the petitioners' interest is in jeopardy.*"

5. However, copy of the extracts from both the electronic cash register and electronic credit ledger have not been filed by the petitioner.

6. Be that as it may, considering the fact that the impugned order has been passed against the petitioner without giving an opportunity to the petitioner to reply the show cause notice, the impugned order is quashed and the matter is remitted back to the respondent.

7. The petitioner is at liberty to file a reply to the show cause notice subject to the petitioner depositing 10% of disputed tax within a period of 30 days from the date of receipt of a copy of this order. In case the aforesaid sum of Rs.22,83,579/- has already been recovered, there shall be no further recovery, pending further orders regarding the demand proceedings.

8. The impugned order, which stands quashed, shall be treated as addendum to the show cause notice that preceded the impugned order. The respondent shall pass fresh orders on merits and in accordance with law as expeditiously as possible preferably within a period of three months. Needless to state, the petitioner shall be heard, before passing the order.

This Writ Petition is disposed of, with above directions. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd

19.06.2024

To
The State Tax Officer (FAC),
Thuckalay -2 Assessment Circle,
Commercial Taxes Buildings,
Thuckalay.

C.SARAVANAN, J.

apd

W.P.(MD) No.12979 of 2024

19.06.2024