BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.01.2025**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.1635 of 2025
and
W.M.P.(MD) Nos.1158 and 1160 of 2025

M/S.S.L.Engineers,
represented by its Proprietor,
Baluchamy Perumal Senthilkumaran
... Petitioner

/vs./

The State Tax Officer,
Theni I Circle, Commercial Taxes Building,
Theni. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the Respondent vide her proceedings in GSTIN 33BAYPS0513H1ZJ/2023-24, Dated 15.07.2024 and its summary order in Form GST DRC-07 bearing Reference No.ZD330724180276A, dated 15/07/2024 and quash the same as it is illegal and passed in gross violation of Principles of Natural Justice and further direct the Respondent to re-do the assessment afresh after providing an opportunity of Personal Hearing as per the provisions of the GST Act, 2017.

For Petitioner : Mr.A.Satheesh Murugan

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

ORDER

The writ petition has been filed challenging the order passed by the respondent in GSTIN 33BAYPS0513H1ZJ/2023-24, dated 15.07.2024 and its summary order in Form GST DRC-07 bearing Reference No.ZD330724180276A, dated 15/07/2024 and for the consequential direction to the respondent to re-do the assessment afresh after providing an opportunity of personal hearing as per the provisions of the GST Act, 2017.

2. The learned counsel for the petitioner would submit that an order of assessment had been made beyond the show cause notice issued to the petitioner. The show cause notice was issued to the petitioner indicating that the petitioner is liable to pay a sum of Rs.16,61,708/-, which represents the tax for the period from April 2023 to January 2024 together with penalty of Rs.1,51,064/-. However, under the impugned order, the petitioner had been mulct with the penal liability at

the rate of Rs.15,10,644/- and a further interest of Rs.2,27,962/- and determining the total liability at Rs.32,49,250/- which is beyond the show cause notice. Hence, he seeks interference with the order passed by the respondent.

3. The show cause notice given to the petitioner dated 04.06.2024 indicates the liability of the petitioner at Rs.16,61,708/- which includes the tax liability of Rs.15,10,644/- and penalty of Rs.1,51,064/-. However, under the impugned order, the respondent has determined the total liability of the petitioner at Rs. 32,49,250/-, which includes the tax liability of Rs.15,10,644/-, penal liability of even amount and interest of Rs.2,27,962/-. Hence, as rightly pointed out by the learned counsel for the petitioner, the impugned order is beyond the show cause notice issued to the petitioner. Further, a perusal of the order impugned would show that the petitioner had submitted a reply on 04.07.2024 and he had not been given any opportunity of hearing.

4. Even though Mr.R.Suresh Kumar, learned Additional Government Pleader appearing on behalf of the respondent had contended that an opportunity of personal hearing is only directory and not mandatory, I am not unable to accept

the said objection for the simple reason that opportunity of personal hearing is in compliance with the principles of natural justice and any violation thereof would make the order invalid.

5. For the aforesaid reasons and findings, the Writ Petition stands allowed. The impugned order passed by the respondent in GSTIN 33BAYPS0513H1ZJ/2023-24, dated 15.07.2024 is set aside and the matter is remitted back to the respondent to give opportunity of hearing to the petitioner and confine itself to the show cause notice issued by it and thereafter pass appropriate orders on merits and in accordance with law. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

21.01.2025

Index : Yes / No
Internet : Yes / No
mm

To

The State Tax Officer,
Theni I Circle, Commercial Taxes Building,
Theni.

K.KUMARESH BABU, J.

mm

W.P.(MD) No.1635 of 2025

21.01.2025