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W.P.No.9597 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9597 of 2024
and W.M.P.Nos.10618 & 10619 of 2024

M/s.Sri Rajaa Store,
Represented by its Karta of HUF
Mr.Varadharajan Jaikrishnan
93, Demellows Road,
Pattalam, Chennai 600 012.

... Petitioner

-vs-

The State Tax Officer,
Choolai Assessment Circle,
10, II floor, Palaniappa Maligai,
Greens Road, Chennai 600 006.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the impugned proceedings of the respondent in GSTIN: 33AACHJ8732J1Z6 dated

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29.12.2023 and the consequential order under section 73 dated 29.12.2023 in Form GST DRC-07 and quash the orders passed for the year 2017-2018 as passed without considering the objections dated 27.10.2023 filed by the petitioner on 28.10.2023 and so contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017 and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mrs.K.Vasanthamala, GA (T)

ORDER

An assessment order dated 29.12.2023 is assailed on the ground of breach of principles of natural justice.

2. The petitioner asserts that he carries on business with a thin margin. Consequently, it is asserted that the entire tax liability is



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subsumed in the available Input Tax Credit (ITC). Upon receipt of show cause notice dated 29.09.2023, the petitioner replied on 27.10.2023 and pointed out that the outward supplies do not give rise to tax liability after setting off the ITC. After such reply was received, a hearing notice dated 07.12.2023 was issued fixing a personal hearing on 13.12.2023. According to the petitioner, such hearing could not be attended and the notice could not be replied to because of cyclone Michaung. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner referred to the reply dated 27.10.2023 and pointed out that such reply was also uploaded on the portal. He further submits that the petitioner had stated that he would submit all relevant documents to establish that ITC was availed of in respect of genuine purchases. If provided an opportunity, he submits that the petitioner would placed all such documents before the assessing officer. By further pointing out that



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the entire ITC availed of by the petitioner was reversed and tax liability was imposed, on instructions, he submits that the petitioner agrees to remit Rs.5,00,000/- as a condition for remand.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice on behalf of the respondent. She submits that even a person operating on a thin margin would be liable to pay some amount of tax. In the factual context of the petitioner paying no tax on outward supplies, she submits that the impugned order is justified. She also points out that a reasonable opportunity was offered by way of a personal hearing on 13.12.2023.

5. On examining the impugned order, it is evident that tax liability was imposed because the petitioner replied without annexing documents. As a consequence of such order, ITC to the extent of about Rs.1.04 crore was reversed. In the petitioner's reply, the petitioner has stated that outward supplies do not give rise to tax



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liability after setting off ITC. The petitioner has also asserted that proper bills and other documents are available. In these circumstances, it is just and appropriate that an opportunity be provided by the petitioner to contest the tax demand on merits albeit by putting the petitioner on terms.

6. Therefore, the impugned order dated 29.12.2023 is set aside on condition that the petitioner remits a sum of Rs.5,00,000/- towards disputed tax liability as agreed to within *three weeks* from the date of receipt of a copy of this order. The petitioner is also permitted to submit additional documents in support of the reply within the aforesaid period. Subject to receipt of the petitioner's reply and upon being satisfied that the above mentioned sum of Rs.5,00,000/ was received towards the disputed tax demand, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within *two months* from the date of receipt of the petitioner's



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additional documents.

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7. W.P.No.9597 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.10618 and 10619 of 2024 are closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

The State Tax Officer,
Choolai Assessment Circle,
10, II floor, Palaniappa Maligai,
Greens Road, Chennai 600 006.



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SENTHILKUMAR RAMAMOORTHY,J

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