

W.P.No.12874 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.12874 of 2024
and W.M.P.Nos.14037 & 14038 of 2024

M/s.Vaduvambikai Enterprises,
Represented by its Managing Partner,
Mr.T.Logeswaran,
Door No.32, V.Block,
Anna Nagar, Chennai-600 040.

... Petitioner

-VS-

The State Tax Officer,
Amaidakarai Assessment Circle,
F-50, First Avenue, Anna Nagar (East),
Chennai-600 102.

... 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: 33AABFV6209K1Z5/2017-2018 dated 30.12.2023 and the summary of the order in Form GST

1/6



W.P.No.12874 of 2024

DRC-07 dated 30.12.2023 passed in Reference No.:ZD331223269566A and quash the impugned proceedings as passed contrary to the provisions of the CGST/TNGST Act, 2017 and also against the principles of natural justice.

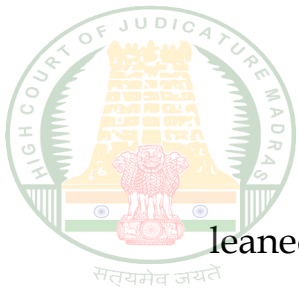
For Petitioner : Mr.P.Rajkumar

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

ORDER

An order in original dated 30.12.2023 is assailed on the ground that a personal hearing was not offered.

2. The petitioner is a partnership firm, which was originally represented by the Managing Partner, Mr.T.Logeswaran. After the writ petition was filed, it is submitted that Mr.T.Logeswaran passed away and that the partnership firm is now being managed by his wife and mother. Since the impugned order was issued without hearing the petitioner and without offering a personal hearing,



W.P.No.12874 of 2024

WEB COPY

learned counsel for the petitioner submits that interference with such order is required. On the merits, learned counsel submits that the petitioner was a registered person under the Tamil Nadu Value Added Tax Act, 2006. As a contractor engaged in works contracts, he submits that tax was deducted at source while making payments to the petitioner and that the petitioner is entitled to transition such TDS into the GST regime and take credit for the same. By referring to the impugned order, learned counsel submits that the tax proposal pertains to a sum of Rs.6,65,396/-, corresponding to the TDS portion which the petitioner is entitled to claim as input tax credit (ITC). If provided an opportunity to contest the tax demand on merits, he submits that the petitioner would be in a position to justify dropping the tax proposal.

3. Learned counsel for the petitioner has placed on record a show cause notice dated 05.12.2022, which refers to a personal hearing being offered to the petitioner. However, a subsequent show



W.P.No.12874 of 2024

cause was issued on 20.09.2023 in respect of the same tax proposal.

WEB COPY

This show cause notice does not refer to a personal hearing. The impugned order was issued in December 2023 after the show cause notice dated 20.09.2023. On examining the impugned order, there is no reference to a personal hearing being offered. Under sub-section 4 of Section 75 of applicable GST enactments, a personal hearing is mandatory either if requested for or if an order adverse to the tax payer is proposed to be issued. This case falls within the latter category.

4. For reasons set out above, the impugned order dated 30.12.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice dated 05.12.2022 within fifteen days from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue a fresh order within a period of *three months* from the date of receipt of the



W.P.No.12874 of 2024

petitioner's reply.

WEB COPY

5. W.P.No.12874 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.14037 and 14038 of 2024 are closed.

07.06.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

kal

To

The State Tax Officer,
Amaidakarai Assessment Circle,
F-50, First Avenue, Anna Nagar (East),
Chennai-600 102.

5/6



WEB COPY



W.P.No.12874 of 2024

SENTHILKUMAR RAMAMOORTHY,J

kal

W.P.No.12874 of 2024
and W.M.P.Nos.14037 & 14038 of 2024

07.06.2024

6/6