

2024 (85) G.S.T.L. 390 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Senthilkumar Ramamoorthy, J.

TVL. GAYATRI GRANITES

Versus

ASSISTANT COMMISSIONER (ST), SALEM

W.P. No. 10674 of 2024 and W.M.P. Nos. 11764 & 11766 of 2024, decided on 23-4-2024

Demand - Tax or ITC not involving fraud, etc. - Mismatch between Form GSTR-3B and Form GSTR-2A - Violation of natural justice - Upon examining return filed by assessee, notice in Form ASMT-10 was issued followed by an intimation alleging Form GSTR-3B returns and auto populated Form GSTR-2A - Impugned order was passed thereafter - Assessee asserted that he was unaware of proceedings since notices and orders were uploaded in "View additional notices and order" tab of GST portal but not communicated to petitioner through any other mode - Assessee further submitted that if provided an opportunity to contest tax demand on merits, assessee would be in a position to explain discrepancy - *HELD* : As a registered person under applicable GST enactments, assessee was under an obligation to monitor GST portal on an ongoing basis - Therefore, explanation provided by petitioner was not entirely convincing - At same time, tax demand was confirmed only because petitioner failed to submit a reply to show cause notice and attend personal hearing - In overall facts and circumstances matter was to be remanded for reconsideration - Section 73 read with Section 61 of Central Goods and Services Tax Act, 2017 - Section 73 read with Section 61 of Tamil Nadu Goods and Services Tax Act, 2017. *[paras 5 and 6]*

Matter remanded in favour of assessee

REPRESENTED BY : Shri Sanskar Samdaria, for the Petitioner.

Mrs. K. Vasanthamala, GA (T), for the Respondent.

[Order]. - An order dated 16-8-2023 and the consequential demand notice dated 17-8-2023 are challenged in this writ petition on the ground of breach of principles of natural justice.

2. The petitioner is engaged in the business of supplying granite, sandstone and related products. Upon examining the returns of the petitioner, notice in Form ASMT-10 was issued on 17-2-2023. This was followed by intimation dated 25-3-2023 and show cause notice dated 20-6-2023. The impugned order was issued thereafter on 16-8-2023. The petitioner asserts that he was unaware of proceedings since the notices and orders were uploaded in the "View additional notices and order" tab of the GST portal, but not communicated to the petitioner through any other mode.

3. Learned Counsel for the petitioner submits that the confirmed tax proposal pertains to the mismatch between the petitioner's GSTR-3B returns and the auto populated GSTR-2A. If provided an opportunity to contest the tax demand on merits, he submits that the petitioner would

be in a position to explain the discrepancy. On instructions, he submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mrs. K. Vasanthamala, Learned Government Advocate, accepts notice for the respondent. She points out that the petitioner was provided sufficient opportunities in the form of a notice in Form ASMT-10, an intimation and a show cause notice. She also points out that a personal hearing was offered on 30-6-2023.

5. As a registered person under applicable GST enactments, the petitioner is under an obligation to monitor the GST portal on an ongoing basis. Therefore, the explanation provided by the petitioner is not entirely convincing. At the same time, it should be noticed that the tax demand was confirmed only because the petitioner failed to submit a reply to the show cause notice and attend the personal hearing. In the overall facts and circumstances, albeit by putting the petitioner on terms, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand.

6. For reasons set out above, impugned order dated 16-8-2023 is set aside and the matter is remanded for reconsideration, subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within a maximum period of **two weeks** from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of **three months** from the date of receipt of the petitioner's reply.

7. W.P. No. 10674 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P. Nos. 11764 and 11766 of 2024 are closed.