

2024 (85) G.S.T.L. 410 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Senthilkumar Ramamoorthy, J.

TVL. SRI BHAVANI AUTOMOBILES

Versus

STATE TAX OFFICER (ST), THIRUKAZHUKUNDRAM

W.P. No. 10581 of 2024 and W.M.P. Nos. 11613 & 11614 of 2024, decided on 22-4-2024

Demand - Tax or ITC involving fraud, etc. - Mismatch between Form GSTR-3B and Form GSTR-1 - Violation of natural justice - Period 2017-18 - Case of assessee was that impugned order was issued within six months from date of issuance of show cause notice in violation of Section 74(2) of CGST Act, 2017 and further that he was unaware of show cause notice and impugned order because same was not communicated through any other mode other than being uploaded on portal - Assessee also submitted that assessee had paid additional tax and was willing to remit 10% of disputed tax demand as condition for remand - *HELD* : Since impugned order was issued without assessee being heard, in interest of justice matter was to be remanded for reconsideration - Section 74 of Central Goods and Services Tax Act, 2017 - Section 74 of Tamil Nadu Goods and Services Tax Act, 2017. *[paras 4 and 5]*

Matter remanded in favour of assessee

REPRESENTED BY : Shri R. Anishkumar, for the Petitioner.

Shri T.N.C. Kaushik, Additional Government Pleader (T), for the Respondent.

[Order]. - An order dated 27-11-2023 is challenged primarily on the ground of breach of principles of natural justice. The petitioner asserts that he was unaware of the show cause notice dated 22-6-2023 and the impugned order because the same was not communicated through any other mode other than being uploaded on the portal.

2. Learned Counsel for the petitioner referred to show cause notice dated 22-6-2023 and submitted that the impugned order was issued within six months from the date of the show cause notice. Learned Counsel contends that this violates sub-section (2) of Section 74 of applicable GST enactments. In addition, Learned Counsel points out that the petitioner paid excess amounts as is evident from the screenshot of the petitioner's portal at page No. 41 of the typed set of papers. On instructions, he submits that the petitioner is ready and willing to remit 10% of the disputed tax demand as a condition for remand.

3. Mr. T.N.C. Kaushik, Learned Additional Government Pleader, accepts notice for the respondent. He points out that principles of natural justice were complied with by issuing intimation dated 22-5-2023, show cause notice dated 22-6-2023 and a personal hearing notice dated 1-11-2023.

4. On perusal of the impugned order, it is evident that the tax proposal confirmed therein pertains to the discrepancy between the petitioner's GSTR-3B and 1 returns for financial year 2017-2018. Learned Counsel for the petitioner points out that additional tax was remitted to the extent of Rs. 6,75,073.10 as per the screenshot at page No. 41 of the typed set of papers. This aspect warrants verification by the respondent. Nonetheless, since the impugned order was issued without the petitioner being heard, reconsideration on terms is necessary in the interest of justice.

5. Solely for reasons set out above, the impugned order dated 27-11-2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a 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 of the petitioner's reply 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 order within a period of three months from the date of receipt of the petitioner's reply.

6. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.