BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) Nos.2311 and 2313 of 2021
and
W.M.P(MD)Nos.1922 & 1923 and 1925 & 1926 of 2021

M/s.Sparrow Reality,
Rep. by its Partner S.Paulraj ... Petitioner in both W.Ps

Vs.

The State Tax Officer,
Inspection Cell – II,
Intelligence Wing,
7th Cross, North East,
Thillai Nagar,
Trichy – 620 018. ... Respondent in both W.Ps

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in its impugned proceedings made in GSTIN:33ADSFS9170Q1ZZ/2019-20 and GSTIN:33ADSFS9170Q1ZZ/2018-19 respectively, dated 30.09.2020 and quash the same as illegal and against the principles of natural justice and consequently, directing the respondent to re-do the assessment after affording the petitioner the opportunity of cross examination and personal hearing and in accordance with law.

(In both W.Ps)
For Petitioner : Mr.J.Prasanna Kumar
For Respondent : Mrs.J.Padmavathi Devi, Special Government Pleader

COMMON ORDER

These Writ Petitions have been filed by the petitioner to quash the orders of the respondent in GSTIN:33ADSFS9170Q1ZZ/2019-20 and GSTIN:33ADSFS9170Q1ZZ/2018-19 respectively, dated 30.09.2020.

2.The brief facts of the case are as follows:

(i) The petitioner is a partnership Firm registered under the Indian Partnership Act, 1932 and the petitioner has got registered the Firm under the Goods and Services Tax Act, 2017 and assessed to tax with GST Registration No.33ADSFS9170Q1ZZ. The petitioner is providing agency service, more particularly, in the nature of collection agency service/C & F agent, to its Principal who is trading in consumer durables goods as well as doing business of finance under Multi-level-Marketing arrangements.

(ii) While the matter stood thus, the petitioner's place of business was inspected by the respondent, upon an authorisation dated 20.01.2020 issued by the Joint Commissioner (ST) (Intelligence), Trichy Division. At the time of inspection, one of the partners' sworn statement was recorded on 27.01.2020. Thereafter, alleging certain defects and discrepancies, the respondent issued the show-cause notices dated 01.06.2020 for the financial years 2018-19 and 2019-20, calling upon the petitioner to produce the bank accounts and to explain the nature of the transactions done by him through bank accounts maintained by him.

(iii) In response, the petitioner also sent a letter on 30.06.2020 seeking adjournment, stating that he was unable to appear before the respondent as the lock down imposed due to Covid-19 pandamic was in force at the relevant point of time. Thereafter, the petitioner also filed his detailed reply to the show-cause notices on 24.07.2020. However, without considering the reply filed by the petitioner, the respondent has passed the impugned assessment orders. Hence, these writ petitions.

3. The learned counsel appearing for the petitioner submitted that before passing the impugned assessment orders, necessarily opportunity should be given to the petitioner to explain his case and therefore, the impugned orders are to be set aside.

4. Per contra, the learned Special Government Pleader would submit that opportunities were given to the petitioner to produce his accounts for verification. But, the petitioner did not avail that opportunity and therefore, the respondent passed the impugned orders and hence, there is no illegality or infirmity in the said orders.

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent and perused the materials placed before the Court.

6. Considering the fact that though the petitioner was given a personal hearing, as it was the peak period of Covid-19 Pandamic, the petitioner was not able to appear before the authorities, necessarily, an opportunity of personal hearing should be given to the petitioner to explain his case and therefore, the impugned orders are liable to be set aside.

7. In the result, this writ petitions are allowed and the impugned orders passed by the respondent dated 30.09.2020, are set aside and the matter is remanded back to the respondent for fresh consideration after giving an opportunity of cross examination and personal hearing and to pass appropriate orders on merits and in accordance with law. Such exercise shall be completed by the respondent, within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PM

Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer,
Inspection Cell – II,
Intelligence Wing,
7th Cross, North East,
Thillai Nagar,
Trichy – 620 018.

+2 CC to M/s.J.PRASANNAKUMAR, Advocate (SR-15537[F] dated 08/04/2021)

+1 CC to M/s.SPL GP (SR-15628[F] dated 09/04/2021)

W.P(MD)Nos.2311 and 2313 of 2021
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