BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.7200 of 2022
and
W.M.P(MD).No.5436 of 2022

M/s.Sadhurmugan Traders
Represented by its Authorised Representative,
Mr.K.Tamil Mani,
No.284, Vishvanatha Nagar,
Oddanchatram,
Dindigul District-624 619. ... Petitioner

Vs.

The State Tax Officer (Insp.)
Inspection Cell-1,
O/o.The Deputy Commissioner (ST),
(Inspection), Madurai. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice dated 17.02.2022 issued by the respondent in GSTIN/33GFBPS1533E1ZR/2019-20 and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.K.S.Selva Ganesan
Additional Government Pleader

ORDER

The petitioner has challenged the impugned show cause notice, dated 17.02.2022. Earlier, the petitioner was issued with a show cause notice, dated 26.11.2019 for an assessment year 2019-2020. The assessment order came to be passed on 02.03.2022. There are about five proposals were there in the show cause notice. The penalty of Rs.50,000/- was imposed to the petitioner for not maintaining the records in the registered place of business. The order passed by the respondents on 02.03.2022 was challenged before this Court in W.P.(MD).No.8161 of 2020 etc. batch by an order, dated 31.08.2020. The writ petition was allowed with the following observations:

4. A reading of the above provision shows that after the explanation is recieved from the writ petitioners, the authority must apply their mind and if they contemplate an adverse decision, then they must provide an opportunity of hearing. Therefore, issuing a personal hearing notice even prior to the receipt of the explanation cannot be said to be compliance of the aforesaid statutory requirements. That stage would arise only after the authority prima facie considers the explanation and contemplates an adverse decision.

5. Since there is a clear violation of the aforesaid requirement, the orders impugned in the writ petitions stand quashed and the writ petitions are allowed. The matters are remitted to the file of the respondents to pass orders afresh in accordance with law. The respondents will issue personal hearing notice to the writ petitioners herein and thereafter pass orders afresh. No costs. Consequently, connected miscellaneous petitions are closed.

2. Pursuant to the aforesaid order, the personal hearing notice was issued to the petitioner on 22.02.2021 and 19.03.2021 and thereafter, the impugned notice, dated 17.02.2022 has been issued. Meanwhile, the appeal filed by the respondents was also dismissed on 14.03.2022 in the light of the order passed by this Court in W.P.(MD).No.8161 of 2020 etc. batch on 31.08.2020.

3. It is the case of the petitioner that there is only five proposals in the show cause notice, dated 26.11.2019. However, six other proposals have been incorporated in the new show cause notice and therefore, this is contrary to law. It is therefore submitted that the show cause notice which has been impugned in this writ petition has to go. Already under similar circumstances, the same petitioner filed W.P.(MD).No.7199 of 2022 for the assessment year 2018-2019, a detailed order has been passed. The reasons given in the said order complies to the facts of this case. The relevant portion from the aforesaid order reads as under:

"*6. The assessment order which was earlier passed on 02.03.2020 has been set aside by this Court by its order, dated 31.08.2020. There is no restriction or qualification in the said order. The order dated 02.03.2020 completely stands quashed. Therefore, the department's appeal was also dismissed as not maintainable. Therefore, I am unable to accept the contention of the learned counsel for the petitioner. The petitioner has to answer to the proposals contained in the show cause notice dated 20.12.2019, content of which has been incorporated in the impugned show cause notice dated 07.01.2022. The so-called new proposals appears to be prima facie covered by the first six proposals in the show cause* *notice, dated 20.12.2019. They are inter connected. Therefore, I do not find any merits in challenge to the impugned show cause notice by the petitioner.*

7. Be that as it may, I direct the petitioner to file a detailed reply including objections which has been raised in this writ petition before the respondent. The respondent shall consider the same and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed."

4. In the light of the above, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
The State Tax Officer (Insp.)
Inspection Cell-1,
O/o.The Deputy Commissioner (ST),
(Inspection), Madurai.

+1 CC to M/s.SPL.GP (SR-19372[F] dated 19/04/2022)

W.P(MD).No.7200 of 2022
18.04.2022

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