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W.P.(MD).Nos.13851 and 13870 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD).Nos.13851 and 13870 of 2022

and

W.M.P.(MD).Nos.9853, 9854, 9864 and 9866 of 2022

W.P.(MD).Nos.13851 of 2022

Asia (Chennai) Engineering
Company Private Limited,
Represented by its,
Managing Director,
Mahinder K.Jain

... Petitioner

Vs.

1.The Assistant Commissioner (ST) (FAC),
Tamil Sangam Salai Assessment Circle,
Dr SVKS Thangaraj Salai,
Madurai – 625 020.

2.The Assistant Commissioner (Circle),
Valluvarkottam Assessment Circle,
No.6, Greams Road,
Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the
impugned proceedings of the first respondent passed in



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GSTIN 33AAGCA3826M1ZM - Tax period July 2017 to March 2018 dated 31.03.2022 and quash the same, as the impugned proceedings is in violation of principles of natural justice, cryptic, arbitrary and further direct the first respondent to re-do the assessment after granting of personal hearing in accordance with law.

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Asia (Chennai) Engineering
Company Private Limited,
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... Petitioner

Vs.

1.The Assistant Commissioner (ST) (FAC),
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Dr SVKS Thangaraj Salai,
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2.The Assistant Commissioner (Circle),
Valluvarkottam Assessment Circle,
No.6, Grems Road,
Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in GSTIN 33AAGCA3826M1ZM - Tax period April 2018 to May 2018 dated 31.03.2022 and quash the same, as the impugned proceedings is in violation of principles of natural justice, cryptic, arbitrary and further direct the first



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respondent to re-do the assessment after granting of personal hearing in accordance with law.

(In both Writ Petitions)

For Petitioner : Mr.N.Murali

For Respondents : Mr.P.Subbaraj,
Special Government Pleader.

COMMON ORDER

In continuation and conjunction with the earlier orders passed by this Court on 01.07.2022, the following order is passed. The earlier order is hereunder:

“The contention of the petitioner is that the show cause notice was issued to the petitioner on 30.11.2021 for revoking the erroneous refund claim. Thereafter, the petitioner had sent a reply, dated 07.01.2022, on 08.01.2022, which has been received by the first respondent on 10.01.2022, it could be seen through tracking of the postal department as well as the letter from the postal department. Thereafter, the petitioner had received the impugned adjudication order passed by the first respondent, wherein, in paragraph No.4, it is stated that as a part of principles of natural justice, personal hearing was offered to the petitioner on 17.02.2022 and again on 16.03.2022 and



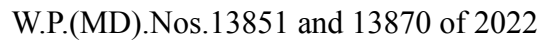
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since no one appeared, an adjudication order was passed on 31.03.2022. The primary contention of the petitioner is that the petitioner had sent a hard copy of reply to the show cause notice on 07.01.2022, which was not considered and further, as per Section 75(4) of the Central Goods and Service Tax Act, 2017, it is clearly held that “an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person”, denoting that when the adjudication officer on completion of adjudication, decides to impose penalty or any penalty imposed against the assessee, naturally, an opportunity to be given. In this case, no such opportunity has been given. The learned counsel for the petitioner would submit that the personal hearing notice was not sent to the portal register of the respondents.

2.Mr.S.Kameswaran, learned Government Advocate appearing for the respondents would submit that after online filing of the returns all the communication by the assessee with the department as well as department with the assessee or only through the portal. The show cause notice was issued through portal. Thereafter, it is for the assessee to reply within a period of thirty days through portal. In this case, the written reply has been sent after



3.Further, the learned counsel for the petitioner submitted that this Court in batch of cases, has held that personal hearing is must before any orders is finalised. In support of his contention, he has produced the order passed by this Court in W.P.No.13652 of 2020, dated 19.01.2021, wherein, the following paragraph is extracted hereunder:-

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request is received, or where the officer contemplates adverse decision against the assessee. Thus, it is only in cases where the explanation offered by the assessee is accepted that there is no necessity for personal hearing. In all other cases, it is incumbent upon the revenue to extend an opportunity of personal hearing to the petitioner. This, in my view, is the proper interpretation of Section 75(4)...”

4. In view of the above, there shall be an order of interim stay till 02.08.2022. Notice.

5. Post the matter on 02.08.2022”.

2. In continuation to the earlier order, it is seen that the representation referred in Section 73(9), 74(9) and 76(3) of GST Act, to any notice issued and the summary has to be uploaded electronically in prescribed form GST-DRC-01 under Sub Rule (1). He emphasises that thereafter it was mentioned as 'shall be furnished' in form GST-DRC-06, wherein, specifically the word 'electronically' is missing. This is for the reason that in case of unregistered dealers to make a reply they will not have access to the portal. In such cases, they have to necessarily send their reply or explanation through post/ physical mode. When such is permitted for the unregistered dealers, no



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reason to deny the registered dealers and they cannot be denied right of representation. In this case, admittedly physical representation has sent on 08.01.2022 received by them on 10.01.2022. Having received the same, they ought to have referred to it and considered the same and thereafter given the petitioner an opportunity to give his explanation. In view of non consideration, the petitioner denied his right of opportunity, principles of natural justice.

3. The learned Special Government Pleader appearing for the respondents submitted that as per Section 169 of the Act, the circumstances under which the notice has to be served are stated in which one of the mode is through email. Section 169(c) of the Act is that by sending communication to the email address provided at the time of registration of the assessee/dealers and by making the information available on common portal. In this case, in the portal, the personal hearing details have been posted. Likewise, notice have been sent through email. The system administration of salestax officer, Chennai was requested to provide copies of the personal hearing notice served electronically through common portal as per the proviso (c) and (d) of the Section 169 of the GST Act and proper mode of service is satisfied, the



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fact of sending notices through common portal was made available from Chennai. The hearing date was intimated on 24.01.2022 to the petitioner asking him to appear on 01.02.2022 before the Assessing Officer with all documents and there was no response. Likewise, on 07.03.2022 it was intimated, for personal hearing on 16.03.2022, the Taxpayer requested to attend the hearing with valid supporting documents. This is for the assessment year 2017-2018 and also again for the assessment year of 2018-2019. After receiving the same, the petitioner failed to appear, neither gave explanation nor filed any objection. Instead, they claimed that on 10.01.2022, they sent a physical representation and their objections not considered and hence it is in violation of principles of natural justice. For that reason, the petitioner filed writ petition.

4. The learned counsel for the petitioner in support of his contention produced the screen shot of the details available in the portal on 20.08.2022 wherein, it shows, a show cause notice under Section 73 and 74 and GST DRC-01 is initiated and issued date on 30.11.2021 and due date to reply is on 30.12.2021, confirming refusal of personal hearing details.



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5. Therefore, this Court not going into the merits contested by both the petitioner and the respondents, finds the petitioner had sent a detailed representation dated 07.01.2022 which received by the respondents on 10.01.2022 which is not disputed. The only objection of the Department is that the postal/physical reply not considered, since it was not sent through portal. The petitioner deserves personal hearing so that his objections can be heard. This case is for erroneous refund. In such circumstances, it would be appropriate that personal hearing is given and the documents considered, thereafter the Department to proceed further. In view of the same, the Department to give opportunity of personal hearing to the petitioner, hear the objections, peruse the documents submitted and the explanations. The Department submits that now the file of the petitioner transferred to the second respondent.

6. In view of the same, the second respondent is directed to fix the personal hearing date for the petitioner, give him an opportunity, receive any documents if produced and thereafter proceed with the show cause notices issued earlier in SCN Reference No.223011210520025 dated 30.11.2021 for the tax period July 2017 to March 2018 and in SCN.Reference.No.



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223011210520145 dated 30.11.2021 for the tax period April 2018 to May 2018. The entire process to be completed within a period of three (3) months from the date of receipt of a copy of this order.

7. In view of the above, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.08.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

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