BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.20622 of 2022
and
W.M.P(MD)Nos.14948 and 14949 of 2022

M/s.Jothi Agency,
Represented by its Proprietor,
Ganeshkumar,
60/K Chatram East Street,
Kovilpatti. ... Petitioner

Vs.

1.The State Tax Commissioner (GST),
GST Office, 4th Floor,
Ezhilagam,
Chepauk,
Chennai-5.

2.The State Tax Officer (Circle),
Kovilpatti,
Tuticorin District. ...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 records relating to the summary order passed by the second respondent, dated 23.05.2022 in Reference No.ZD330522010718P, and quash the same and to direct the second respondent to pass fresh orders after considering the objections filed by the petitioner, dated 06.05.2022 after affording all opportunity of being heard for the assessment year 2020-2021.

For Petitioner : Mr.K.Vadivelu

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioner is a proprietor of Jothi agency filed this writ petition seeking for quashing the impugned order in Reference No.ZD330522010718P, dated 23.05.2022.

2. The petitioner purchasing edible oil from the whole sale dealer and doing retail business. The petitioner filed monthly returns, namely, GSTR-1 and GSTR-3B under the Goods and Service Tax Act from 01.04.2022 to 31.03.2022. The petitioner was served with a notice on 10.02.2022 stating that on scrutiny of Form GSTR-1 Vs GSTR-3B, it was found grossly in variance. After receipt of the notice, the petitioner filed his objections on 06.05.2022 and informed that the difference is Rs.3,26,721/-, but the notice shown difference of Rs.59,57,314/-. The petitioner enclosed the difference between the purchase and sale details, tabulation also produced in the affidavit. These factors were not considered and further, no personal hearing was given to the petitioner and the impugned order, is cryptic an non-speaking order passed without details.

3. The learned Special Government Pleader for the respondents submits

that from the reply to the show cause notice, it is seen that the petitioner has given up the option of personal hearing. Further, he was not given full particulars and merely given the difference between GSTR-1 and GSTR-3B. On perusal of the records and documents, finding that the classification is also improper, returns are wrongly classified and with regard to the oil seeds and and oleaginous fruits, whether or not broken palm nuts and kernels of seed quality are not provided. In view of the same, the impugned order came to be passed. The petitioner on his own, given up the right of personal hearing and now filed this writ petition. He further submitted that under Section 107 of the GST Act, the petitioner has got 90 days to file his appeal, if he is aggrieved on the impugned order.

4. Considering the same and on perusal of the materials, it is seen that the petitioner has filed this writ petition within a period of appeal. Further, the petitioner in his reply filed an annexure showing the difference of calculation. In the impugned order, there is no reason given for why the petitioner's calculation was not considered. The petitioner’s submission in the show cause notice reply is that 'by a technical hitch'. The petitioner requires a personal hearing. Further, from the impugned order, it is seen that department has questioned the classification, which needs personal hearing and perusal of the

documents and thereafter, detailed order to be passed.

5. In view of the same, this Court finds that by cryptic non-speaking order, an impugned order cannot be passed. Hence, the impugned order is hereby set aside. The petitioner is to be given an opportunity for personal hearing and thereafter, on the documents submitted by the petitioner, the issue can be decided. The petitioner to approach the respondents within a period of 30 days from the date of receipt of copy of this order seeking for personal hearing within a period of three months. The second respondent is directed to conclude the show cause proceedings and pass appropriate orders.

6. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

02.09.2022

Index : Yes / No
Internet : Yes/ No

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M.NIRMAL KUMAR, J.

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