IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.8736 of 2023
&
W.M.P.Nos.8920, 8921 & 8923 of 2023

M/s. Shree Shanker Agencies,
Represented by its partner Mr.J.C.Saai Subas,
No.892/1A, Plot No.6,
Gopi Krishna Colony,
Gokul Nagar Road,
Hosur, Krishnagiri 635 109. ...Petitioner

Vs.

1.Union of India Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 001.

2.Central Board of Indirect Taxes and Customs
Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 001.

3.Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai 600 005.

4.Deputy Commissioner (ST) (GST Appeal),
Salem and Erode,
Commercial Taxes Building,
Pitchards Road, Salem – 636007.

5.Assistant Commissioner (Circle),
Hosur (North-I) Assessment Circle,
Commercial Taxes Building,
Bangalore road, Hosur – 635109. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the order passed by Deputy Commissioner (ST) (appeal) in the AP No.:GST/312/2021 on the file of the 4th respondent dated 13.02.2023 and quash the same as illegal, void and consequentially remand the matter to 4th respondent for fresh reconsideration.

For Petitioner :Mr.Adarsh Ramanujan

For Respondents :Ms.Amirtha Poonkodi Dinakaran[R3 to R5]
Government Advocate

O R D E R

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate accepts notice for R3 to R5 and is armed with requisite instructions to enable this Court to dispose the matter finally, even at the stage of admission. In light of the order that is proposed to be passed, no notice is thought necessary to R1 and R2.

2. The challenge in this writ petition is to an order of assessment dated 13.02.2023, passed in terms of the provisions of the Tamil Nadu Goods and

Services Tax Act, 2017 (in short 'Act').

3. Mr.Adarsh Ramanujan, learned counsel for the petitioner raises a preliminary plea of non-adherence to the principles of natural justice. He would submit that the order has been passed based on the final hearing stated to be conducted on 13.02.2023, whereas, the petitioner would dispute such a hearing.

4. Per contra, Ms.Amirtha states that, prior to order dated 13.02.2023, for which she admits no notice has been issued, notice was issued on 03.01.2022, listing the matter on 24.01.2022. She points out that the notice (a copy of which is furnished), contains a signature acknowledging receipt.

5. No doubt, there is a scrawl beneath the word 'Received' on the copy of notice dated 03.01.2022. However the scrawl does not match with the signature in the affidavit filed in support of this writ petition. The petitioner is a sole proprietary and seeing as the signature is not that of the sole proprietor, it is uncertain as to who has received the notice.

6. That apart, it is also an admitted position that there is no notice issued thereafter for the hearing stated to have been conducted on 13.02.2023 as stated in the impugned order. The officer has proceeded on

the basis that there is no appearance for the hearing on 13.02.2023 which is clearly impermissible, since learned standing counsel accedes to the position that no notice was issued and no hearing scheduled on that date.

7. In light of the above admitted position that there is a clear violation of the principles of natural justice, impugned order dated 13.02.2023 is thus set aside and shall be treated as a show cause notice, to which the petitioner is permitted to file its objections, if any.

8. For this purpose, the petitioner is directed to appear before the authority on 31.03.2023 at 10.30 am. along with written submissions and supporting evidences, if any, without expecting any further notice in this regard. After hearing the petitioner and considering materials/evidences, if any, orders shall be passed de novo by the authority within a period of four (4) weeks from date of personal hearing, i.e., on or before 28.04.2023.

9. This Writ petition is allowed, as are the connected Miscellaneous Petitions. No costs.

21.03.2023

mpl
Index : Yes/No
Speaking Order/Non speaking Order
Neutral Citation:Yes/No
Note: Issue order copy by today (29.03.2023)

To

1.Union of India Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 001.

2.Central Board of Indirect Taxes and Customs
Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 001.

3.Commissioner of Commercial Taxes,
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DR.ANITA SUMANTH,J.
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