IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9392 of 2022
and W.M.P.No.9138 of 2022

M/s.Caratlane Trading Private Limited,
No.32, Rutland Gate 2nd Street,
Khadar Nawaz Khan Road,
Chennai 600 006. .. Petitioner

vs.

1. The Principal Commissioner of GST
and Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai.

2. The Union of India,
Represented by its Under Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 001. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order-in-Original No.47/2022 CH.N.GST dated 28.03.2022 [DIN:20220359TK0000000BCA6] issued by the 1st respondent, quash the same and the 1st respondent to afford an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.H.Siddarth
Standing Counsel

<u>O R D E R</u>

The petitioner is aggrieved by the impugned order in Original No.47 of 2022- CH.N.GST dated 28.03.2022

2 .By the impugned order, the demand proposed in Show Cause Notice No.15/2019 dated 12.04.2019 issued by the Office of the first respondent/Principal Commissioner of CGST and Central Excise has been confirmed. The petitioner had not filed a reply to the Show Cause Notice although a personal hearing was also fixed by the first respondent on 05.11.2020.

3. It appears that the personal hearing was not held on the aforesaid date as there was a change in the jurisdiction. The petitioner appears to have sent a letter dated 15.05.2019 to the first respondent and requested the respondent to grant personal hearing. Meanwhile, the petitioner was called upon to file a reply to the above show cause notice. A personal hearing was therefore fixed on 19.01.2022. Pursuant to

personal hearing dated 29.12.2021, the impugned order in Original No.47 of 2022- CH.N.GST dated 28.03.2022 was passed by the Office of the first respondent/Principal Commissioner of CGST and Central Excise.

4. It appears that the petitioner has sought for adjournment. The case was thereafter adjourned to 08.02.2022 and thereafter on 09.02.2022. The authorised representative of the petitioner had also appeared before the 1st respondent and had made submissions on behalf of the petitioner and appears to have relied on order in Original No.13/2019 CHN.GST(Commr.) [C.No.V/15/48/2019.Ch.N.Adj].

5. After the case was heard on 09.02.2022, the petitioner appears to have sent an e-mail dated 21.02.2022 stating that they had additional facts and grounds to be disclosed and therefore requested for another opportunity of personal hearing by e-mail on 21.02.2022 as the petitioner had not filed reply to the show cause notice dated 12.04.2019.

6. Since the petitioner failed to file reply to the above show cause notice dated 12.04.2019, and made only oral submissions during personal

hearing on 09.02.2022 the first respondent has proceeded to pass impugned order dated 28.03.2022. The impugned order dated 28.03.2022 was passed purely based on the oral submission of the petitioner during the personal hearing held on 09.02.2022. Ordinarily, the petitioner should be directed to file a statutory appeal against The impugned order dated 28.03.2022 of the first respondent.

7. Without a reply to the show cause notice, no useful purpose would be served even if the petitioner is asked to work out its remedy before the Appellate Authority .

8. Considering the above, the Court is inclined to quash the impugned order passed by the first respondent and remit the case back to the first respondent to pass a fresh order on merits and in accordance with law.

9. The petitioner shall however pay a sum of Rs.2,00,000/- as cost to the credit of **Adyar Cancer Institute (WIA), East Canal Bank Road, Adyar, Chennai** within a period of 15 days from the date of receipt of a copy of this order.

10. Within a period of 15 days of such compliance, The petitioner shall file its reply if any and thereafter appear for a personal hearing on the date to be fixed by the first respondent before passing order. No adjournment shall be entertained by the first respondent before passing order.

11. The first respondent shall however endeavour to pass a fresh order on merits within a period of 75 days of such compliance. It is made clear that in case the petitioner fails to comply with the above conditions, this order shall stand automatically revoked *sine die* without further reference.

12. The Writ Petition stands allowed with the above directions. Consequently, connected Miscellaneous Petition is closed. No costs.

18.07.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes/ No
kkd

C.SARAVANAN, J.

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To

1. The Principal Commissioner of GST
   and Central Excise,
   Chennai North Commissionerate,
   No.26/1, Mahatma Gandhi Road,
   Chennai.

2. The Under Secretary,
   Union of India,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi 110 001.

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