IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. No.28301 of 2023

M/s.R.B.Dhall Products,
rep. by its Proprietor,
Mrs.Dhanapal Renuka .. Petitioner

Versus

The Assistant Commissioner,
Thondiarpet Assessment Circle,
The Integrated Commercial Taxes Buildings,
Wall Tax Road, Elephant Gate,
Chennai-600 003. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent with regard to the impugned order for cancellation of Registration passed in Ref.No.ZA3303230323725, dated 07.03.2023, and quash the same as illegal and arbitrary and against the principles of natural justice and consequently direct the respondent to restore the petitioners GSTIN 33AJGPR9357L3ZH to enable him to pay taxes and returns.

For Petitioner : Mr. K.M.Malarmannan

For Respondent : M/s. E.Ranganayaki, AGP (T)

ORDER

With consent of the learned counsel for both sides, the main Writ Petition itself is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the respondent dated 07.03.2023.

3. The case of the petitioner is that, the petitioner is running a Firm, under the name and style, "R.B.Dhall products", for the past seven years. According to the petitioner, in terms of Tamil Nadu Goods and Service Act, 2017 (hereinafter, referred to as TNGST Act), dhall products are exempted from payment of tax. Hence, the petitioner used to file 'NIL' returns for every assessment year through the Accountant. However, for a period of six months, the Accountant failed to file returns and the same was also not informed to the petitioner. Owing to non-filing of returns, the respondent issued a show cause notice, dated 21.02.2023, and subsequently, by means of the impugned order, cancelled the registration of the petitioner.

4. Mr.K.M.Malarmannan, learned counsel for the petitioner submitted that the petitioner is not get used with the computer system and hence, the petitioner is not aware as to when, the show cause notice was issued to them and only after verification of returns of the petitioner by another Accountant on 20.08.2023 the petitioner came to know that they have been issued with a show cause notice through Portal on 21.02.2023 and to non-filing of reply in time, all of a sudden, their registration has been cancelled by means of the impugned order.

4.1 The learned counsel for the petitioner further submitted that before passing the impugned order of cancellation of petitioner's registration, the respondent could have afforded an opportunity of hearing to the petitioner. Hence, it is submitted that the impugned order suffers from violation of principles of natural justice, and therefore, prayed for setting aside the same, as, due to cancellation of registration, the petitioner is facing economic loss, as they are unable to carry on the business.

5. M/s. E.Ranganayaki, learned Additional Government Pleader (T) would submit that as against the impugned order, the petitioner has alternate and efficacious remedy of filing an appeal before the Appellate Authority, however, without resorting to the same, the petitioner has straight away filed the present Writ Petition.

6. In reply, the learned counsel for the petitioner would submit that since the petitioner's husband was hospitalized owing to renal disorder, and in such circumstances, the petitioner was not able to file appeal before the Appellate Authority within the period of limitation, and hence, the petitioner is before this Court, by way of this Writ Petition.

7. Heard Mr. K.M.Malarmannan, learned counsel for the petitioner and M/s. E.Ranganayaki, learned Additional Government Pleader (T), who accepts notice on behalf of the respondent.

8. It is an admitted fact that the show cause notice was served on the petitioner only through Portal on 21.02.2023 and not by means of any other modes of communication, viz., e-mail or letter. Since the petitioner is not well accustomed with the system knowledge, the petitioner is not aware as to when such show cause notice was issued, and for what purpose. Even the earlier Accountant, whom the petitioner has entrusted the work of filing 'NIL' returns, failed to file returns for a period of six months and also not informed the petitioner about the same and the petitioner came to know about the cancellation of their registration only on verification of their returns via. Portal through another Accountant, who has been subsequently engaged by the petitioner.

9. Further, it is noticed that the impugned order was passed without affording opportunity of hearing to the petitioner. Though the petitioner has failed to exhaust the alternative remedy of filing appeal, the same is due to the reason that the petitioner's husband had fallen sick and therefore, she was not in a position to file appeal against the impugned order within the prescribed time.

10. Thus, under the aforesaid circumstances, this Court is of the view that suffice it would be to dispose of the Writ Petition with a direction to the petitioner to challenge the impugned order of cancellation of registration by way of appeal before the Appellate Authority, who shall entertain the same and pass orders in accordance with law after affording an opportunity of hearing to the petitioner.

11. Accordingly, the Writ Petition is disposed of by directing the petitioner to file an Appeal before the Appellate Authority, who has been constituted under the TNGST Act within a period of 30 days from the date of receipt of a copy of this order and the same shall be entertained by the Appellate Authority, without raising any ground of limitation and pass orders in accordance with law within a period of 30 days thereafter. No costs.

03.10.2023

sd

Index : Yes/no

Internet : yes/no

To
The Assistant Commissioner,
Thondiarpet Assessment Circle,
The Integrated Commercial Taxes Buildings,
Wall Tax Road, Elephant Gate,
Chennai-600 003.

Krishnan Ramasamy, J.,

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