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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.31228 of 2022
and
W.M.P.No.30669 of 2022

Jose Bone Products,
Rep by its Proprietor, R.Venkatesh,
No.61/A, Kaniampalayam Road,
Pollachi 642120.
Now at No.1/54-B, Indira Colony,
Vannarapettai,
Tirunelveli 627 003.

... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Pollachi (Rural) Assessment Circle,
Commercial Taxes Buildings,
No.8, Palakkad Road,
Pollachi 642 001.

2.The Branch Manager,
City Union Bank Limited,
Door No.10, First Floor,
North Car Street, Tirunelveli 627 006.

... Respondents

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Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in the proceedings of the 1st respondent in Order in TIN 33962282895/11-12 dated 13.10.2021 and notice dated 12.07.2022 and bank attachment notice in Form U dated 02.08.2022 issued by the 1st respondent to the 2nd respondent and quash these orders and notices as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Ms.Amirta Dinakaran
Government Advocate, for R1
Ms.Hasmukh S.Surana, for R2

ORDER

This writ petition has been filed challenging the impugned order passed by the respondent on 13.10.2021.

2. The case of the petitioner is that the petitioner is in the business of supplying bone meal and they had not at all imported any goods. Under these circumstances, the 1st respondent had issued a notice dated 14.07.2015, wherein they had asked for the details of the imported goods from the petitioner. Thereafter, prior to the filing of reply, the impugned

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order dated 13.10.2021 was passed by the respondent without providing any opportunity of personal hearing to the petitioner. Further, a prior notice dated 12.07.2022 was also issued by the 1st respondent, whereby they demanded the tax amount for the value of the imported goods, which is said to have been furnished by the petitioner to the Customs Department.

3. The learned counsel for the petitioner would submit that the petitioner is only in the business of selling bone meal and they had not at all imported any materials. Hence, he would submit that the 1st respondent had wrongly understood as if the petitioner had imported timber and other products and demanded the tax amount by virtue of the prior notice. Further, the 1st respondent had passed the aforesaid impugned order without providing any opportunity of personal hearing to the petitioner. Hence, he would submit that the said impugned order has been passed in violation of principles of natural justice and the same is liable to be set aside.

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4. In reply, the learned counsel for the 1st respondent would submit that in spite of the service of notice, the petitioner had not appeared before the 1st respondent and hence, the impugned order came to be passed. Further, she would submit that if any order is passed by this Court, the same may be complied with by the 1st respondent.

5. Heard the learned counsel for the petitioner and the 1st respondent and also perused the materials available on record.

6. In the present case, it appears that the petitioner is in the business of supplying bone meal and they had not at all imported any materials at any point of time. However, the notice was issued by the 1st respondent as if the petitioner had imported timber and the said information is said to have been obtained by the 1st respondent from the Customs Department. Further, according to the 1st respondent, the petitioner had received the show cause notice and they had not filed any reply for the said notice.

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7. This Court is of the view that even assuming that the petitioner had received the notices and not filed any reply, the 1st respondent is supposed to have provided the opportunity of personal hearing to the petitioner before the passing of impugned order, which is mandated in terms of Section 75(4) of the Goods and Services Tax Act, 2017 and the same has not been done in the present case.

8. Further, the contention of the petitioner is that the supply of bone meal is exempted from the VAT duty and hence, he is not liable to pay any tax amount. However, the notice was issued by the respondent under the wrong assumption that the petitioner had imported timber. Thereafter, the impugned order was also passed, in violation of principles of natural justice, without providing any opportunity of personal hearing.

9. Therefore, this Court is of the considered view that any order has to be passed only after providing an opportunity of personal hearing. Further, in the present case, the petitioner had passed the impugned order under the misconception that the petitioner had imported timber, which is

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totally contrary to the business of the petitioner. Hence, for the interest of justice, the impugned order is liable to be set aside.

10. Accordingly, the impugned order dated 13.10.2021 is set aside. The attachment notice dated 02.08.2022, which was issued based on the said impugned order, shall stand lifted. While setting aside the said order, this Court remits the matter back to the 1st respondent. The 1st respondent is directed to grant time to the petitioner for filing reply and pass appropriate orders after providing the opportunity of personal hearing within a period of 3 months from the date of receipt of copy of this order.

11. With the above directions, this writ petition is disposed of. No cost. Consequently, the connected miscellaneous petition is also closed.

06.12.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

The Assistant Commissioner (ST),
Pollachi (Rural) Assessment Circle,
Commercial Taxes Buildings,
No.8, Palakkad Road,
Pollachi 642 001.

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<u>KRISHNAN RAMASAMY.J.,</u>

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(1/2)

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