IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. No.28245 OF 2023
and
W.M.P.No.27770 of 2023

M/s.Arul Murugan Starch Industries,
rep. By its Proprietor,
No.5/320, Vedachennimalai,
Attur Taluk. .. Petitioner

Versus

The State Tax Officer,
Attur (Town) Circle,
Attur. .. 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 herein in Order GSTIN 33ADEPN6567AIZR/2017-18, dated 24.07.2023, quash the same as illegal and to direct the respondent to consider the reply and thereby pass fresh assessment order after affording an opportunity of hearing and pass such other orders as this Court may deem fit.

For Petitioner : Mr. S.Rajesh

For Respondent : Mr. V.Prashanth Kiran GA (T)

ORDER

Heard Mr. S.Rajesh, learned counsel appearing for the petitioner, and Mr. V.Prashanth Kiran, learned Government Advocate (Tax) accepting notice for the respondent. With consent of the learned counsel appearing for the parties, the Writ Petition is taken up for disposal at the stage of admission in the absence of reply affidavit.

2. The petitioner is a registered dealer, on the file of the respondent, under the provisions of the Tamil Nadu Goods and Service Tax Act, 2017 (hereinafter, referred to as 'the TNGST Act') and the challenge in the Writ Petition is to the assessment order passed under the said Act for the year 2017-18.

3. Pursuant to the surprise inspection conducted by the State Tax Officer (Enforcement Wing) at the place of petitioner's business premises on 10.11.2017, the Enforcement Officials found that stocks were available at the business premisses without purchase bills and the same were not accounted for in the stock register and setting out such details a report was filed. Based on the said report filed by the Enforcement Officials Wing, the respondent/Assessing Officer issued show cause notices, dated 24.02.2023 and 26.05.2023 pointing out certain defects and called upon the petitioner, to state as to why, the difference stock was not accounted in the books of account. On receipt of such notices, the petitioner submitted a detailed reply/objections dated 06.03.2023 and 23.06.2023, with supportive documents and requested to drop the proceedings against them. The respondent/Assessing Officer, without even considering the objections filed by the petitioner, confirmed the proposals made in the show cause notices. Hence, the present Writ Petition.

4. Mr.S.Rajesh, learned counsel appearing for the petitioner contended that the petitioners are maintaining the stock register as per the norms without any violation, however, the same could not be produced at the time of inspection and though the said fact has been clearly set out in their reply/objections dated 06.03.2023 and 23.06.2023, to the show cause notices, dated 24.02.2023 and 26.05.2023, the respondent/Assessing Officer failed to consider the same, and pre-concluded that the petitioner failed to maintain the stock register and thereby, confirmed the proposals contained in the show cause notices. The learned counsel contended that before passing the impugned assessment order, had the petitioner been given an opportunity of being heard, obviously, the petitioner would have convinced the respondent/Assessing Officer by stating that whole facts. Therefore, the learned counsel prayed for setting aside the impugned order, as the same is in violation of the principle of *audi alteram partem.*

5. Mr.V.Prashanth Kiran, learned Government Advocate (Tax) for the respondent fairly conceded that no opportunity of personal hearing was given to the petitioner before passing the impugned order, and therefore, submitted that appropriate order may be passed.

6. In the light of the above facts, this Court is of the view that the impugned assessment order passed by the respondent is not sustainable in law and is liable to be set aside.

7. In the result, the Writ Petition is allowed, the impugned order passed by the respondent dated 24.07.2023 is set aside and the matter is remitted back to the respondent/Assessing Officer for fresh consideration, who shall fix a date for personal hearing and hear the petitioner in person and peruse the records and redo the assessment in accordance with law. It is also left to the petitioner to raise all contentions on merit before the State Tax Officer, the respondent/assessing officer, which shall be considered by the respondent before passing orders. No costs. Consequently, connected Miscellaneous Petition is closed.

03.10.2023

sd

Index : yes/no

Neutral Citation : yes/no

To

The State Tax Officer,
Attur (Town) Circle
Attur.

Krishnan Ramasamy, J.,

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