IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29336 of 2023
and
W.M.P.No.28969 of 2023

M/s.Amar Communication,
Rep by Manager J.Jitendra,
No.20, Saraswathy Street,
Mahalingapuram, Chennai 600034.

... Petitioner

Vs.

The State Tax Officer,
Valluvarkottam Assessment Circle,
No.10, Palanlappa Maaligai, 4^{th} Floor,
Greams Road, Chennai 600 006.

... Respondents

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 order passed by the respondent in TIN:33310863027/2015-16 dated 01.08.2023 received by the petitioner on 08.08.2023 and quash the said order as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order dated 01.08.2023.

2. The learned counsel for the petitioner would submit that the show cause notice was issued by the respondent on 05.07.2022, whereby the respondent had called upon the petitioner to file their reply within a period of 15 days from the date of receipt of said notice. Further, he would submit that the respondent had fixed the date for personal hearing on 19.07.2022, which is 14^{th} day from the date of issuance of notice. Thereafter, the petitioner had filed their reply on 01.08.2022 and the impugned order came to be passed exactly after a period of one year i.e., on 01.08.2023.

3. He would further contend that in the said impugned order, the respondent had dealt with the reply filed by the petitioner. However, prior to the passing of the said impugned order, no personal hearing opportunity was provided to the petitioner, which is mandated as per the provisions of Section 75(4) of the Act, wherein it has been stated as follows:

> *"75(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person."*

4. The learned counsel for the respondent had accepted the aforesaid facts and would submit that all those aspects can be raised before the Appellate Authority, where the alternate remedy is available for the petitioner by way of filing an appeal. Hence, he requests this Court to pass appropriate orders.

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

6. In the present case, the show cause notice was issued on 05.07.2022. In the said show cause notice, the respondent had permitted the petitioner to file their reply within a period of 15 days i.e., on or before 20.07.2022. The date for personal hearing was fixed by the respondent on 19.07.2022. Thereafter, the reply was filed by the petitioner on 01.08.2022 and the same was considered by the respondent in the impugned order dated 01.08.2023. However, no opportunity of personal hearing was provided by the respondent before the passing of said impugned order.

7. This Court is of the considered view that the respondent should have provided the opportunity of personal hearing to the petitioner before the passing of impugned order. However, in the present case, the date for personal hearing was fixed even prior to the filing of reply by the petitioner. Hence, it is an admitted fact that no personal hearing was provided by the respondent and this aspect requires consideration.

8. Further, as far as the availability of alternate remedy is concerned, no doubt that the petitioner can very well approach the Appellate Authority and the Appellate Authority can also consider the aspects, which were not considered by the Assessing Officer. However, the consideration, which has to be given by the Assessing Officer, cannot be equated with the consideration given by the Appellate Authority. Further, in law, the petitioner is entitled for two well considered orders, one is from the Assessing Officer and another is from the Appellate Authority. In the present case, the order passed by the Assessing Officer is in violation of principles of natural justice. Hence, it cannot be construed as a well considered order. Thus, if this Court directs the petitioner to approach Appellate Authority and avail the alternate remedy, he would lose one well considered order from the Assessing Officer, which he is legally entitled for. Therefore, when the petitioner is legally entitled for two well considered orders on adjudication of facts, the said right cannot be deprived on the reason that the petitioner can avail the alternate remedy.

9. In view of the above, the impugned order dated 01.08.2023 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent. The respondent is directed to provide an opportunity of personal hearing to the petitioner and thereafter pass appropriate order in accordance with law within a period of 45 days from the date of receipt of copy of this order.

10. 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
nsa

To

The State Tax Officer,
Valluvarkottam Assessment Circle,
No.10, Palanlappa Maaligai, 4th Floor,
Greams Road, Chennai 600 006.

KRISHNAN RAMASAMY.J.,

nsa

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