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W.P.No.29552 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29552 of 2023
and WMP No.29187 of 2023

M/s.SCM Silks Private Limited
No.74, New Market Street,
Tirupur – 641 604
Represented by its Managing Director
Mr.K.Sivalingam

...Petitioner

Vs.

The Assistant Commissioner
(ST) (FAC), Tirupur South
Assessment Circle, Tirupur

...Respondent

Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order bearing Reference No.ZD330723008369E dated 04.7.2023 based on the written order GSTIN 33AAJCS7849B1Z9/2018-19 dated 28.6.2023 passed by the respondent and quash the same.

For Petitioner : Mr.T.R.Ramesh

For Respondent : Mr.T.N.C.Kaushik

Additional Government Pleader



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ORDER

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

2. The petitioner firm is engaged in the business of trading of garments and other allied items in the brand name of “The Chennai Silks” in the domestic market.

3. The respondent/Department issued an intimation in Form DRC-01A dated 23.11.2021 with regard to the ascertained tax liability under Section 74 of the Tamil Nadu Goods and Services Act, 2017 (in short, the Act), wherein, several alleged defects were noticed by the Department and issues were mainly concerned with reconciliation of returns and books, ITC verification with GSTR-2A among other things, for which, the petitioner had replied on 17.1.2022. The respondent sent a reminder DRC-01A on 04.3.2022. Thereafter, DRC-01 show cause notice dated 26.11.2022 was issued and the personal hearing was fixed on 02.12.2022. In the said personal hearing, the respondent recorded the



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statement of reply. According to the petitioner, though the petitioner filed a reply and their reply was also recorded by the respondent, the impugned order dated 04.7.2023 came to be issued without considering the reply and passed a non-speaking order. Though, they have provided the opportunity of personal hearing and permitted the petitioner to provide the reply, it is duty of the respondent to deal with the reply filed by the petitioner while passing the impugned order. But, the reply filed by the petitioner has not been taken into consideration and the respondent passed the non-speaking order. Hence, the above Writ Petition has been filed before this Court.

4. Per contra, the learned Government Advocate appearing on behalf of the respondent made a formal objection, but fairly conceded that the reply filed by the petitioner has not been considered by the respondent while passing the impugned order. He further submitted that the matter may be remanded to the respondent for passing a fresh order after considering the reply filed by the petitioner.



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5. This Court carefully considered the rival submissions made by the learned counsel appearing on either side.

6. The impugned order was passed on 04.7.2023. Before passing the impugned order, it is admitted by the learned counsel on either side that the petitioner was allowed to file a reply and the said reply was filed on 17.1.2022 and a personal hearing was also provided on 02.12.2022. In the said personal hearing, the entire reply has been recorded by the Assessing Officer. Though the respondent received and recorded the entire reply at the time of personal hearing, while passing the impugned order, unfortunately, the respondent has not at all dealt with the stand taken by the petitioner in their reply. Apparently, the impugned order is a non speaking order and no doubt, the petitioner can very well challenge the same before the Appellate authority by filing an appeal under Section 107 of the Act. Under the said provision, the Appellate Authority can entertain the appeal and pass order under Section 107(11) of the Act.

7. The learned counsel for the respondent also would contend that



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the Appellate Authority can play the role of the Assessing Officer and he can peruse the reply and pass a detailed order and thereby, the petitioner will not be deprived of their rights.

8. Even though the petitioner is having appeal remedy before the Appellate Authority, but the Appellate Authority is not conferred with the power to remand the matter to the Assessing Officer for fresh consideration. Further, the petitioner is entitled to have two occasions of the matter to be adjudicated by two Authorities, viz., the Assessing Officer and the Appellate Authority and thereby, can avail two well considered opinion. In the present case, due to the failure on the part of the respondent/Assessing Officer to consider the reply filed by the petitioner and deal with the same while passing the impugned order, by which, the petitioner will deprive of their right to defend before the Assessing Authority if the matter is remanded to the Appellate Authority.

9. Though the Appellate Authority will have the power of the Assessing Officer to make assessment by providing opportunity of



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personal hearing and by considering the reply, the order to be passed by the Appellate Authority cannot be equated with the order that would be passed by the Assessing Officer, who would pass orders after considering the reply/objection and the evidence put forth by the petitioner pursuant to the show cause notice. That apart, the assessee virtually would lose one well considered opinion of the Assessing Officer, for which the assessee is entitled to legally under the provisions of law.

10. Therefore, the aspects, which are to be borne in mind by the respondent/Assessing Officer before passing any assessment order is that the Assessing Officer, while issuing show cause notice shall provide sufficient time for the assessee to file their reply/objection, minimum of 21 days, unless and otherwise any specific time limit is fixed under the provisions of the Act; thereafter, shall afford an opportunity of personal hearing; in case, if the assessee is in need of any documents, which forms the basis for issuance of show cause notice, the same shall also be furnished to the assessee, as the case may be, wherever, it is required; and after conducting a full-fledged enquiry, shall conclude the



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assessment proceedings, in which, the Assessing Officer has to deal with the queries/points, (which the assessee would raise/putforth in the form of reply/objections) in detail along with reasons for rejection of the reply, if any and thereafter, shall pass final assessment order in accordance with law.

11. Unless and otherwise, the above aspects are not scrupulously followed, the same would pave a way for the assessee to go on Appeal before the Appellate Authority and even in the Appeal, if the assessee is unable to succeed, ultimately, it will come to the scrutiny of this Court and Hon'ble Supreme Court, in which case, if the assessment order is set aside, the Department will loose it's revenue. Therefore, once the assessee filed reply/objections pursuant to the show cause notice, it is bounden duty of the Assessing Officer to pass a speaking order, providing reasons for rejection of the reply/objections raised by the the assessee. If any cryptic order is passed without touching upon the queries/contentions of the assessee, ultimately, it would be fatal to the assessee and also cause huge revenue loss to the revenue. Therefore, the



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orders to be passed by the Assessing Officer should always be a speaking order, safeguarding both the interest of the assessee and the Revenue.

12. In the present case, the respondent/Assessing Officer, admittedly, has failed to consider the reply/objections made by the petitioner pursuant to the show cause notice and passed a non-speaking order. The learned counsel also brought to the notice of this Court certain paragraphs mentioned in the show cause notice were re-produced in the impugned order. Therefore, failure on the part of the respondent/Assessing Officer to address the reply/objections of the petitioner/assessee by a speaking order, would vitiate the impugned proceedings.

13. On this score, since the reply/objections made by the petitioner pursuant to the show cause notice remained undecided, this Court feels that the petitioner is entitled to have a considered opinion of the Assessing Officer after taking into consideration the reply filed by the petitioner. Thus, this Court is inclined to set-aside the impugned order



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and remit the matter back for re-consideration. Accordingly, the Assessing Officer is directed to pass a detailed order after taking into consideration the reply filed by the petitioner.

14. In the result, the Writ Petition is allowed and the impugned order is set-aside. The matter is remitted back to the respondent for reconsideration of its order, taking into consideration the reply filed by the petitioner dated 17.1.2022. Needless to say that principles of natural justice shall be followed. No costs. Consequently, the connected WMP is closed.

12.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Note : Issue on 01.11.2023



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KRISHNAN RAMASAMY.J.,
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