IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.29419, 29422, 29424 & 29425 of 2023
and
W.M.P.Nos. 29045, 29049, 29051 & 29053 of 2023

Tvl.Saturn Exports,
Rep by its Partner Mr.Naushad Tunerintavida,
No.69/40, 18B, 1st Street,
Rayapuram Extension,
Tiruppur 641 601.

... Petitioner in all petitions

Vs.

1.The Assistant Commissioner (ST),
Tiruppur Central II Circle,
Tiruppur 641 601

2.The Deputy Commissioner (ST),
GST Appeals, Commercial Taxes Buildings,
Brough Road, Erode.

... Respondents in all petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in GSTIN:33ADGFS4535H1Z3/2017-2018, GSTIN:33ADGFS4535H1Z3/2018-2019, GSTIN:33ADGFS4535H1Z3/2019-2020 and GSTIN:33ADGFS4535H1Z3/2020-2021 respectively, all dated 16.05.2022 and quash the same as they are illegal and gross violation of the principles of natural justice and further direct the first respondent to re-do the assessment afresh after providing me an opportunity of Personal hearing.

For Petitioner
in all petitions : Mr.A.Satheesh Murugan
For Respondent
in all petitions : Mr.C.Harsharaj
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the impugned orders passed by the first respondent without providing an opportunity to the petitioner for personal hearing.

2. Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondents.

3. By consent of the parties, the main writ petitions are taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner would submit that the notice for personal hearing was uploaded in the GST Online Portal on 11.02.2022. However, the petitioner had no knowledge about the issuance of the said notice in the GST Online Portal and under these circumstances, the impugned order came to be passed. Hence, he would contend that if an opportunity was provided to the petitioner, the petitioner would have attend the personal hearing and produced many documents to convince the respondent. However, without providing any opportunity to the petitioner, the first respondent had passed the said impugned order demanding the payment of GST for a sum of Rs.40,00,000/- for four assessment years.

5. Per contra, the learned counsel for the respondents would submit that they have uploaded the notice for personal hearing in the GST Online Portal and this is not the first occasion to upload the same. Further, he would contend that though the petitioner had accessed the said portal and replied to the notice, now he is pleading ignorance. Hence, in the present case, it is not that the respondent had not given any

opportunity to the petitioner, but the petitioner had failed to avail the said opportunity.

6. He would further submit that now the petitioner can very well present their case before the Deputy Commissioner (Appeal), since the Appellate Authority have power to remit the case. Hence, he prayed for dismissal of these petitions.

7. In reply, the learned counsel for the petitioner would request for one last opportunity to appear before the first respondent to file the documents and to express their views of the documents filed. Therefore, he prays this Court to remit back this matter to the first respondent.

8. The learned counsel for the respondents would fairly submit that in such case, the petitioner may be directed to pay 10% of the GST demanded by the respondent and on such payment, the matter shall be remitted back to the first respondent for re-consideration.

9. The learned counsel for the petitioner had also undertook that the petitioner will make the said payment of 10% of GST demanded by the respondent, which would comes around a sum of Rs.4,00,000/-.

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

11. In the present case, it is clear that though the notice for personal hearing was uploaded in the GST Online Portal and the petitioner had accessed the said portal, the petitioner had not seen the said notice. Hence, the impugned order came to be passed without providing any opportunity for personal hearing.

12. Considering the above submissions and discussions, this Court is of the view that the impugned orders shall be set aside on the following conditions:

(i) The petitioner shall pay a sum of Rs.4,00,000/- (10% of GST) to the respondent on or before 15.11.2023 and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) These cases shall be remitted back to the first respondent.

(iii) The first respondent shall re-consider these cases after affording an opportunity of personal hearing to the petitioner.

(iv) The petitioner shall file the documents before the first respondent in advance.

(v)These cases shall be decided on its own merits and the orders shall be passed in accordance with law.

13. With the above directions, these writ petitions are disposed of. Consequently, the connected miscellaneous petitions are also closed.

10.10.2023

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

KRISHNAN RAMASAMY.J.,
nsa

W.P.Nos.29419, 29422, 29424
& 29425 of 2023
and W.M.P.Nos. 29045, 29049,
29051 & 29053 of 2023

10.10.2023
(1/2)