IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29238 of 2023
and
W.M.P.No.28842 of 2023

Haritha Steels
rep. by its Proprietrix
K.S.Vijayalakshmi ...Petitioner

Vs.

The Deputy State Tax Officer,
Nannilam Assessment Circle,
Nannilam, Thiruvarur District. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the respondent in GSTIN-33ASVPV7489BIZY/2019-20 dated 23.01.2023 and to quash the same as illegal.

For Petitioner : Mr.K.Soundara Rajan

For Respondent : Mrs.E.Ranganayaki
Additional Government Pleader (T)

ORDER

With consent, the main Writ Petition itself is taken up for final disposal at the stage of admission itself.

2. The petitioner, who is a dealer in Portland Cement and Iron ores, etc., was an assessee on the files of the respondent under the provisions of Tamil Nadu General Sales Tax Act, 2017 (hereinafter, referred to as 'TNGST Act'). The petitioner has challenged the order passed by the respondent dated 23.01.2023 for the AY 2019-20 whereby, the petitioner has been directed to pay a tax due of Rs.5,54,429 along with penalty.

3. The case of the petitioner is that the petitioner is a registered dealer under the TNGST Act. Pursuant to a surprise inspection conducted by the Officials of the Intelligence Wing at the business premises of the petitioner, certain defects were found out and report was filed and based on the reports filed by the Officials of the Intelligence Wing, the respondent issued a show cause notice and the petitioner was not able to file reply to the said show cause notice in time, and due to non-filing of reply, the respondent passed the impugned order. Hence, the present Writ Petition.

4. Mr.K.Soundara Rajan, learned counsel appearing for the petitioner would submit that the petitioner is a Lady Proprietress and due to heavy loss, she closed down the business and being misled by wrong advice of Auditor, she was not able to file GSTR 4 in time, however, the respondent, who is a Quasi Judicial Authority, without considering the fact that the petitioner is a dealer registered under Section 10 of TNGST Act and opted to pay tax in a composite term mode under GSTR-4 by virtue of which, the petitioner need not file returns in GSTR-3 B for claiming Input Tax Credit (ITC) and accordingly, filed the returns in GSTR 4 though not in time, however, based on certain defects pointed out by the Intelligence Wings Officials that there were sales suppression which was not reported in GSTR-3B, issued the show cause notice.

4.1 The learned counsel further submitted that the question of filing GSTR-3B would not arise, as the petitioner opted to pay tax composite term mode available under Section 10 of the Act, unless and until, the option to pay tax under Section 10 was revoked by the Assessing Officer, the dealer (petitioner in this case) could not unilaterally change the mode of filing returns and if at all any defects, it is the non-filing of quarter statement and annual return for which, the Government extended the period for filing GSTR4 from 01.04.2023 to 30.06.2023 vide notification dated 31.03.2023 and by way of amnesty scheme, time was further extended to 31.08.2023, within which time, the petitioner has filed the quarterly statements and returns along with tax dues. However, the respondent under an wrong impression, as if, the petitioner is an assessee filing returns in GSTR 3B, issued the show cause notice and since the petitioner did not respond to the show cause notice, as she closed down the business and was not in a position to file reply, confirmed the proposals contained in the show cause notice and passed the impugned order. Therefore, the learned counsel prayed for setting aside the same.

5. Mrs.E.Ranganayaki, learned Additional Government Pleader (T) appearing on behalf of the respondent would submit that the petitioner has been issued with a show cause notice calling forth their reply within 30 days, however, since the petitioner failed to file reply in time, the respondent-Department has acted in accordance with law and confirmed the proposals contained in the show cause notice and passed the impugned order. However, the learned counsel with fair enough submitted that since the petitioner due to ill-health had closed down the business and was not in a position to file reply in time, respondent would consider the case of the petitioner afresh, provided, if proper reply is filed by the petitioner to the show cause notice. Hence, learned Additional Government Pleader prayed for appropriate directions.

6. Heard Mr.K.Soundara Rajan, learned counsel appearing for the petitioner and Mrs.E.Ranganayaki, learned Additional Government Pleader (T), who accepts notice on behalf of the respondent.

7. It is no doubt true that the petitioner is a taxypayer under section 10 of the Act and as per said section, the petitioner need not file GSTR 3B and filing of returns under GSTR 4 is suffice and accordingly, the petitioner filed GSTR 4, however, with a delay. Thus, considering the fact that the petitioner, being a Lady Proprietress and due to reverse of fortune, she was met with heavy loss, which resulted in closure of her business and due to wrong advice of the Auditor, she was not in a position to file returns in time and also not able to reply to the show cause notice owing to her ill-health , this Court in the interest of justice is of the view that one more opportunity can be granted to the petitioner for filing her reply and thereafter, the respondent shall pass fresh orders in accordance with law.

8. Accordingly, this Writ Petition is allowed, the impugned order is set aside and the matter is remanded back to the respondent for fresh assessment, who shall, after issuing a notice calling forth petitioner’s reply to the show cause notice and on filing of reply by the petitioner, if necessary, along with supportive documents within 30 days from the date of receipt of such notice, is directed to consider the same and after affording a personal opportunity of hearing shall pass fresh orders in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

09.10.2023

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Index : yes/no
Neutral Citation : yes/no

To

The Deputy State Tax Officer,
Nannilam Assessment Circle,
Nannilam, Thiruvarur District.

Krishnan Ramasamy,J.,

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