IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30207 of 2023
and
W.M.P.No.29813 of 2023

B & H Logistics,
Rep by its Director,
Yashwant Kumar,
No.150, 2nd Floor, Block-C,
M.M.Complex, Linghi Chetty Street,
Mannady, Chennai 600 001.

... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Harbour Assessment Circle,
Office of Deputy Commercial Tax Officer,
Harbour Zone-1, Chennai North,
Tamilnadu.

... Respondents

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 in show cause notice reference No.ZD3302230070562 dated

02.02.2023 and order reference No.ZD330523020564S dated 05.05.2023 passed by the respondent and quash the same and consequently direct the respondent to give an opportunity of being heard to the petitioner.

For Petitioner : Mr.A.Ganesh

For Respondent : Ms.E.Ranganayaki,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned show cause notice and the impugned order passed by the respondent

2. Ms.E.Ranganayaki, learned Government Advocate, takes notice on behalf of the respondents.

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

4. The learned counsel for the petitioner would submit that the respondent had issued a show cause notice dated 02.02.2023, wherein it

has been stated that the petitioner has to submit the reply on or before 01.03.2023 and further, a date (08.02.2023) was also fixed in the said notice for the purpose of personal hearing. The reply was filed by the petitioner on 29.04.2023.

5. He would also contend that the personal hearing was fixed by the respondent on 08.02.2023, which was even before the filing of reply. However, no opportunity was provided to the petitioner after the filing of reply. Though the said aspect was mentioned in the reply filed by the petitioner, the respondent had passed the impugned order dated 05.05.2023 without providing any opportunity for personal hearing.

6. In reply, the learned counsel for the respondent would submit that considering the facts and circumstances of the case, an appropriate order may be passed by this Court.

7. Heard the learned counsel for the petitioner and the respondents and also perused the materials available on record.

8. On perusal of the said impugned order, it is clear that nothing has been captured with regard to the service of notice, granting time for filing reply and providing opportunity for personal hearing to the petitioner. Hence, even though the order is passed under Section 73 of the Goods and Services Tax Act, this order will be construed only as a non-speaking order since no reason has been provided with regard to the non-providing of opportunity to the petitioner and with regard to the filing of reply. That apart, even if no reply was filed, it is the duty of the respondent to provide one opportunity for personal hearing to the petitioner. However, no such hearing was provided in the present case.

9. In view of the above, this Court feels that this impugned order was passed in violation of principles of natural justice and hence, this Court is inclined to set aside the impugned order dated 05.05.2023. While setting aside the impugned order, this Court remits the matter back to the respondent for re-consideration.

10. Further, the respondent is directed to pass a speaking order after taking into consideration of the reply filed by the petitioner and after affording opportunity of personal hearing to the petitioner. Since the reply was already filed by the petitioner, the respondent shall fix a date of hearing, on which date the petitioner shall appear before the respondent to present their case without fail.

11. With the above directions, this writ petition is disposed of. Consequently, the connected miscellaneous petition is also closed.

18.10.2023

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

KRISHNAN RAMASAMY.J.,
nsa

W.P.No.30207 of 2023
and W.M.P.No.29813 of 2023

18.10.2023
(1/2)