IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.32610 & 32612 of 2023
and
W.M.P.No.32200 of 2023

HIL Limited,
43/2, Periyapalayam Road,
Kannigaiper Village,
Manjanskaranai Post, Uthukottai Taluk,
Thiruvallur, Tamil Nadu 601102
Rep by its Assistant Vice President, Mr.Kamal Saboo

... Petitioner in both petitions

Vs.

Assistant Commissioner (Sales Tax),
Madhavaram Assessment Circle,
Survey No.1275/3, Integrated Commercial Taxes Building,
Thiruvallur Division, Room No.104,
1st Floor, Elephant Gate Bridge Road,
Chennai 600 003.

... Respondent in both petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to quash the impugned orders dated 02.09.2023 in Ref No.ZD3309230088963 and impugned show cause notice dated 13.07.2023 under Ref No.ZD330723054267E respectively issued by the respondent to the petitioner.

For Petitioner
in both petitions : Mr.Satish Parasaran,
Senior counsel
for Arva Merchant

For Respondent
in both petitions : Mr.C.Harsharaj,
Additional Government Pleader

COMMON ORDER

These writ petitions were filed challenging the impugned orders dated 02.09.2023 passed by the respondent and impugned show cause notice dated 13.07.2023 issued by the respondent.

2. The case of the petitioner was that initially show cause notice

dated 13.07.2023 was issued by the respondent, wherein, the respondent had requested the petitioner to file their reply on or before 12.08.2023 and also fixed a date for personal hearing on 27.07.2023.

3. The learned counsel for the petitioner would submit that on 27.07.2023, they had uploaded a communication, wherein, they had asked for the details of the annexure of show cause notice. The said communication was considered as reply by the respondent and thereafter, the impugned order dated 02.09.2023.

4. The main grievance of the petitioner is that though the petitioner had asked for the details of annexure, without providing the same, the impugned order came to be passed hurriedly by the respondent. Further, he would contend that the respondent had not provided any opportunity of personal hearing to address their issues before the passing of impugned order. Hence, these writ petitions.

5. In reply, the learned counsel for the respondent would fairly

submit that though a communication was uploaded by the petitioner on 27.07.2023, wherein they had asked for details of the annexure of the show cause notice, the same was not provided to the petitioner, due to which the petitioner was unable to file their reply. Further, he would submit that the respondent is supposed to have provided the personal hearing opportunity after the filing of reply by the petitioner. However, in the present case, the date for personal hearing, which was fixed by the respondent, is much before the date of filing of reply. Hence, he would submit that considering the facts and circumstances of the case, any appropriate order may be passed by this Court.

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

7. In the present case, it is admitted by both the learned counsel that no personal hearing opportunity was provided by the respondent prior to the passing of the impugned order dated 02.09.2023. That apart, the details required by the petitioner, i.e., annexure to the show cause

notice, was also not provided to the petitioner.

8. In general, the personal hearing opportunity will be provided only after the filing of reply by the Assessee. However, in the present case, the date for personal hearing (27.07.2023), which was fixed by the respondent, is much before the date of filing of reply (12.08.2023), and in such circumstances, the petitioner had uploaded a communication dated 27.07.2023 requesting the respondent to provide the details of the annexure of show cause notice. However, the said details were not provided to the petitioner, due to which the petitioner was unable to file their reply. Under these circumstances, the impugned order dated 02.09.2023 came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner.

9. Therefore, this Court is of the considered view that the said impugned order was come to be passed in violation of principles of natural justice and the same is liable to be set aside. Accordingly, the impugned order dated 02.09.2023 is set aside.

10. While setting aside the impugned order, this Court remits the matter back to the respondent and the respondent is directed to provide the documents, i.e., the annexures of show cause notice, to enable the petitoner to file their reply, within a period of 21 days from the date of receipt of copy of this order. After filing of reply by the petitioner, the respondent is directed to fix a date for personal hearing and thereafter, pass an appropriate order in accordance with law.

11. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

24.11.2023

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

To

Assistant Commissioner (Sales Tax),
Madhavaram Assessment Circle,
Survey No.1275/3, Integrated Commercial Taxes Building,
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KRISHNAN RAMASAMY.J.,

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