IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.32863 of 2023
and
W.M.P.No.32500 of 2023

Yunus Industrial Stores,
Rep by its Proprietor,
Yunus Fakhruddin Kagalwala,
Old No.33, New No.69,
Sembu Doss Street,
Broadway, Chennai 600 001.

... Petitioner

Vs.

Assistant Commissioner (ST),
Broadway Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Road, Vepery,
Chennai 600 003.

... 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 impugned proceedings of the respondent passed in

33AICPK6043K1ZD/2021-22 dated 12.07.2023 digitally signed on 14.07.2023 and quash the same and further direct the respondent to redo the adjudication in accordance with the law after granting sufficient personal hearing.

For Petitioner : Mr.N.Murali

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings dated 12.07.2023.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that two notices dated 26.08.2022 and 08.12.2022 were issued by the respondent,

wherein the contents are one and the same and the petitioner filed their reply dated 02.09.2022. Further, since the second show cause notice dated 08.12.2022 is only a summary notice with the same contents, the petitioner had not filed any separate reply for the second show cause notice. Under these circumstances, the impugned order dated 12.07.2023 came to be passed by the respondent without considering the reply filed by the petitioner. Hence, this writ petition.

4. Further, he would contend that it is not known as to why the respondent had issued two notices with similar contents. However, at any cost, prior to the passing of impugned order, the respondent is supposed to have considered the reply filed by the petitioner and since, the respondent was failed to do so and passed the impugned order depriving the rights of the petitioner in violation of principles of natural justice, the said impugned order is liable to be set aside.

5. In reply, the learned counsel for the respondent would submit that no reply was filed by the petitioner for the show cause notice dated

08.12.2022 and hence, the assessment order was passed by the respondent. Further, he would fairly submit that if any order is passed by this Court directing the respondent to consider the reply of the petitioner and pass appropriate orders, the same will be complied with by the respondent within the time stipulated by this Court.

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

7. It appears that the two notices dated 26.08.2022 and 08.12.2022 were issued by the respondent, who had also passed the impugned order dated 12.07.2023. However, it is not known as to why the respondent had issued the aforesaid two show cause notices with same contents. Further, since the petitioner had filed their reply on 22.09.2022 for the first show cause notice dated 26.08.2022, the respondent should have taken into consideration of the said reply while passing the impugned order. However, the respondent had issued the second show cause notice dated 08.12.2022, which according to the petitioner, is only a summary

show cause notice. Therefore, since the petitioner had filed a reply for the first show cause notice dated 26.08.2022, they were under the impression that it would be sufficient to meet out their case.

8. In view of the above, the respondent should have considered the reply dated 02.09.2022 filed by the petitioner as the reply filed for both the show cause notices issued by the respondent while passing the assessment order. However, he has failed to do so. Hence, this Court is of the view that the impugned order was passed in violation of principles of natural justice and the same is liable to be set aside.

9. Accordingly, the impugned order dated 12.07.2023 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent and the respondent is directed to consider the reply filed by the petitioner as the reply for both the show cause notice and pass appropriate orders in accordance with law after providing an opportunity of personal hearing to the petitioner.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

22.11.2023

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

To

Assistant Commissioner (ST),
Broadway Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Road, Vepery,
Chennai 600 003.

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.32863 of 2023
and W.M.P.No.32500 of 2023

22.11.2023
(1/2)