IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.11.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

WP No.33132 of 2023 and
WMP No.32824 of 2023

Gabriel India Limited
Represented by its Authorised Signatory
Mr.Rishi Luharuka
52-55, Morranapalli Village,
Sipcot II, Hosur,
Krishnagiri – 635 109 ... Petitioner

vs.

1.State Tax Officer
Office of the Joint Commissioner (ST) (Intelligence)
Group IV, Salem Division
67-A, SIPCOT Industrial Complex,
Hosur – 635 126.

2.State Tax Officer
Office of the Joint Commissioner (ST)
Group-II, Intelligence Salem,
67A, SIPCOT Industrial Complex,
Hosur – 635 126.

3.State Tax Officer
Office of the Joint Commissioner (ST)
Adjudication-I, Intelligence,
Salem, Tamil Nadu
67A, SIPCOT Industrial Complex,
Hosur – 635 126.

4. Assistant Commissioner (ST)
Hosur – II Circle,
67A, SIPCOT Industrial Complex,
Hosur – 635 126. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records relating to impugned order in Assessment Order bearing Reg.No.ZD3310232162146 dated 31.10.2023 passed by the 1st respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran

For Respondent : Mr.C.Harsha Raj,
Addl.Govt. Pleader (Taxes)

ORDER

This writ petition is filed, challenging the impugned Assessment Order bearing Reg.No.ZD3310232162146 dated 31.10.2023 passed by the 1st respondent.

2. The main grievance of the petitioner is that the impugned order is passed without providing an opportunity of personal hearing to them and also without considering the written submissions and documents filed by the petitioner in respect of pre-show cause notice and also the reply to the show cause notice. The date of personal hearing fixed in the show

cause notice was 12.10.2023, which was well before the date by which the reply had to be submitted by the petitioner, which is violation of principles of natural justice.

3. Mr.Raghavan Ramabadran, the learned counsel appearing for the petitioner submitted that the Show Cause Notice was issued on 26.09.2023 by the respondent, directing the petitioner to file objection, if any, within 30 days from the date of receipt of the said notice. However, in the said Show Cause Notice, they have fixed the date of personal hearing as 12.10.2023 at 12.00 pm., that is even before the stipulated time limit of 30 days, prescribed in the show cause notice for filing the reply. On 20.10.2023, the petitioner filed reply to the Show Cause Notice. In the reply, at the last page, in the prayer No.2, the petitioner has submitted as follows -

> 2. *Further, noticee requests your good office to kindly grant an opportunity to be heard before passing any adverse order against noticee,*

4. The learned counsel has also referred to the provisions under Section 75 (4) of the Central Goods and Services Tax Act, 2017 which mandates to provide an opportunity of personal hearing, in the event, if the respondent intends to pass any adverse order against the petitioner which reads as follows -

75. General provisions relating to determination of tax

(1) to (3) ....

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

5. By referring to the above provisions and also the request in the reply made by the petitioner, the learned counsel would submit that the respondents are supposed to provide an opportunity of personal hearing to the petitioner, but on the other hand, they have failed to do so. Thus, the present impugned order came to be passed against the petitioner which is in violation of principles of natural justice and hence, he seeks to set aside the same.

6. Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) appearing for the respondents, by referring to Page 68 of the typed set of papers, submitted that in Col.No.7, under the heading "Option for personal hearing", the petitioner has stated "No" and further, he referred to the last para of the reply which states as follows -

> *We assure you of our continued co-operation in this matter. Meanwhile, in case you require any further clarification/information, we shall be glad to provide the same. We also request your good office to provide us an opportunity to represent before you so as to produce any verbal or documentary evidence, if required, to substantiate the above-mentioned submissions made by us.*

7. By referring to the above said para, the learned Additional Government Pleader would contend that even assuming that the petitioner opted for personal hearing, since the officer decided that personal hearing is not required, he proceeded to pass the assessment order which requires no interference.

8. In reply, the learned counsel appearing for the petitioner submitted by referring to the copy of the screen shot of the portal, which he has produced before this Court, submitted that the petitioner has opted "Yes" in the column which provides "option for personal hearing". However, in the reply to show cause notice filed at page 68, when they have taken print of the uploaded copy, it shows as if the petitioner has opted "No" under the option "for personal hearing". This is the problem the assessees throughout India are facing, i.e. when it is uploaded as "Yes, it shows as "No" in the downloaded printout. The specific request made by the petitioner in the reply by way of prayer was, to provide opportunity of personal hearing, in the event of passing any adverse order against the petitioner. Thus, he prayed this Court to set aside the impugned order and direct the respondents to pass fresh orders after affording an opportunity of personal hearing to the petitioner.

9. At this juncture, the learned Additional Government Pleader appearing for the respondents submitted that if any order is passed by this Court, the same would be considered by the respondents.

10. Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the materials on record.

11. I have given due consideration to the submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents. Considering the provision under Section 75 (4) of the Central Goods and Services Tax Act, 2017 which mandates the respondents to provide an opportunity of personal hearing, where any adverse decision is contemplated against the assessee, irrespective of any request of personal hearing from the petitioner. Further, the petitioner has also stated in the reply filed to the show cause notice that they may be provided an opportunity of personal hearing, in the event of passing any adverse order against them.

12. The only aspect reiterated by the respondents is that while downloading the reply filed by the petitioner from the portal, it has been stated as “No” against the column “option for personal hearing”. Even assuming that the statement made by the respondents is correct, the

petitioner has substantiated their stand by referring to the reply made to the show cause notice wherein specific request was made for personal hearing in case of any adverse order being passed. This Court also perused the screen shot print out of the portal where, the option for personal hearing is mentioned as "Yes" while the downloaded print out from the portal, where the option for personal hearing is mentioned as "No". Further, in the Show Cause Notice, the personal hearing was fixed as 12.10.2023 wherein the time limit provided to the petitioner for filing reply to the show cause notice was 20.10.2023 in which case the personal hearing will normally be fixed only after filing reply. Even if no reply is filed, it is mandatory on the part of the respondents to provide opportunity to the petitioner for personal hearing. Without giving any such opportunity of personal hearing, the impugned order came to be passed, which amounts to violation of provision specified under Section 75(4) of the Act.

13. Such being the case, this Court is of the considered view that at any cost, the respondents ought to have afforded the opportunity of personal hearing to the petitioner considering the statement that the respondent is going to determine the turn over and should have complied the provisions of the Act strictly. Otherwise, this defect could not be rectified which would cause loss of revenue to the Department.

14. Considering all the above aspects, this Court is inclined to set aside the impugned order passed by the first respondent. Accordingly, the impugned order in Assessment Order bearing Reg.No.ZD3310232162146 dated 31.10.2023 is set aside. While setting aside the impugned order, this Courts remits the matter back to the Authority concerned for re-consideration and pass a detailed order in accordance with law, after considering the reply and affording an opportunity of personal hearing to the petitioner. As requested by the learned Additional Government Pleader appearing for the respondents, the date for personal hearing is fixed as 12.12.2023 or any other date that as may be fixed by the respondents, after providing due communication in writing to the petitioner.

15. In the result, this writ petition is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

23.11.2023

Index: Yes/No (½)
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
Rgr

To

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KRISHNAN RAMASAMY, J.

rgr

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(½)