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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.36177 of 2023
and
W.M.P.No.36161 of 2023

M/s.K.G.Foundations Private Limited,
Rep by its Director,
Mr.Harish Kumar,
No.5-5, Marbel Arch, Ground Floor,
Bishop Wallers Avenue East,
Mylapore,
Chennai 600 004.

... Petitioner

Vs.

1.The Deputy Commissioner (ST),
GST-Appeal, Chennai II,
PAPJM Annex Building,
3rd Floor, Greams Road,
Chennai 600 006.

2.The Assistant Commissioner (ST),
Mylapore Assessment Circle,
2nd Floor, Room No.212,
The Integrated Building for Commercial Tax & Registration
Department (South Tower),
Nandanam, Chennai 600 035.

... Respondents

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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 1st respondent in Appeal No. & Year: AP/GST/898/2021 and quash the impugned order dated 11.01.2023 and further direct the 1st respondent to grant an opportunity to the petitioner to argue the appeal and thereafter decide the appeal on its own merits.

For Petitioner : Mr.P.Rajkumar

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

ORDER

This writ petition has been filed challenging the impugned proceedings of the 1st respondent dated 11.01.2023.

2. Ms.E.Ranganayaki, learned Additional Government Pleader, takes notice on behalf of the respondents. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

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3. The learned counsel for the petitioner would submit that the respondents had issued a notice dated 09.01.2023 by fixing the date of hearing on 11.01.2023 and due to the said short notice, the petitioner was unable to appear before the respondent on 11.01.2023. On the same day (11.01.2023), the impugned order came to be passed by the respondents. However, the petitioner was unaware of the said order passed by the respondent and the same was indicated to the petitioner only on 09.11.2023. In the meantime, another notice dated 22.06.2023 has also been issued by the respondent by fixing the date of hearing on 27.06.2023 for the same subject matter. Thus, he would contend that no doubt the respondents had committed illegality in passing the impugned order dated 11.01.2023 and prays this Court to set aside the same.

4. In reply, the learned counsel for the respondent would fairly submit that there is some confusion in issuing the show cause notice to the petitioner. Further, she would submit that since the grievance of the petitioner is with regard to the illegality of the order passed by the respondent, the said impugned order may be set aside and the matter may

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be remitted back to the respondents for re-consideration. In such case, an appropriate order will be passed by the respondent in accordance with law.

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

6. In the present case, the impugned order was passed by the 1st respondent on 11.01.2023, the date on which the hearing was fixed. However, once again a notice dated 22.06.2023 has been issued by the respondent for the very same subject matter. In such case, it appears that when there is some error or non-application of mind, the said impugned came to be passed. Hence, this Court is of the view that the impugned order passed by the 1st respondent is liable to be set aside.

7. In view of the above, this Court is inclined to pass the following order:

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i) The impugned order dated 11.01.2023 is set aside.

ii) While setting aside the impugned order, this Court remits the matter back to the 1st respondent for re-consideration.

iii) The 1st respondent is directed to sent a clear notice to the petitioner within a period of 7 days from the date of receipt of a copy of this order.

iv) Thereafter, the 1st respondent is also directed to pass appropriate orders in accordance with law after providing opportunity of personal hearing to the petitioner.

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

22.12.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,

nsa

To

1.The Appellate Deputy Commissioner (ST) (FAC),
Goods and Service Tax,
Commercial Taxes Building,
Coimbatore.

2.The Commercial Tax Officer,
Pollachi (Rural),
Pollachi,
Coimbatore District.

W.P.No.36177 of 2023
and W.M.P.No.36161 of 2023

22.12.2023

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