BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.05.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.11631 of 2023
and
W.M.P.(MD).No.10097 of 2023

M/s.Bhavadharani Builders,
Represented by its Partner Mr.N.Palanikumar,
Government Works Contractor,
Jeeva Main Road,
Sellur,
Madurai-625 002. ... Petitioner

Vs.

1.The Deputy Commissioner of CGST and Central Excise,
Madurai-II Division,
Central Revenue Buildings,
V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002.

2.The Assistant Commissioner,
Office of the Deputy Commissioner of CGST
and Central Excise,
Madurai-II Division,
Central Revenue Buildings,
V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the 2nd respondent in C.No.IV/09/26/2020 ST Adjn ORDER IN ORIGINAL MAD-ST-ASC-016-2023 dated 20.04.2023 and quash the same as illegal and gross violation of the principles of natural justice and further direct the 2nd respondent to re-do the assessment after considering the reply and providing sufficient opportunity personal hearing to the petitioner.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.R.Nandakumar,
Panel Counsel.

ORDER

This Writ Petition is filed challenging the assessment order dated 20.04.2023 and further direct the 2nd respondent to re-do the assessment after considering the reply and providing sufficient opportunity of personal hearing to the petitioner.

2. The contention of the petitioner is that the respondents have not given sufficient opportunity to file reply to the show cause notice. The Superintendent have issued notice of personal hearing dated 14.11.2022 and the date of personal hearing was fixed on 25.11.2022. But the petitioner has sought an adjournment vide reply dated 23.11.2022 citing his illness. Thereafter, the second respondent has issued personal hearing Notice dated 23.02.2023

directing the petitioner to appear for the personal hearing fixed on 01.03.2023. After receipt of the notice, the petitioner has sent adjournment letter dated 27.02.2023 informing that he has been admitted in Hospital as inpatient and he is undergoing treatment for which he has produced the Medical Certificate. Thereafter, the respondents have issued one more notice dated 10.03.2023, wherein the Superintendent informed that the petitioner should appear for personal hearing on 16.03.2023. Immediately, the petitioner has sent an adjournment letter dated 14.03.2023 seeking “two months time” to file reply to the show cause notice for which the petitioner also enclosed the certificate of the Hospital where he has been diagnosed as having cancer in his right leg. However, the respondents declined to grant adjournment and passed an impugned order dated 20.04.2023.

3. The learned counsel appearing for the respondents on instructions submitted that the issue of service tax liability of contractors engaged by the PWD was already considered by the Hon'ble Division Bench vide order dated 30.11.2022 in W.P.No.24996 of 2019 etc., batch, wherein, the Hon'ble Division Bench has granted only 60 days time from the date of issuance of such Show Cause Notice to file reply. Thereafter, the respondents were granted 90 days for passing final order. Since only 60 days time is granted by the Division Bench,

the respondents is constrained to pass final order, hence the respondents refused to grant further adjournment and has passed the impugned order. The respondents are bound to follow the directions issued by the Hon'ble Division Bench failing which contempt proceedings may be initiated. Therefore, the impugned assessment order was passed. The learned counsel appearing for the respondents further submitted that the petitioner ought to have directed his representatives to appear before the authorities for personal hearing instead of seeking any adjournment. This Court is of the considered opinion that without instructions, without verifying the records, the petitioner cannot direct his representatives to appear. Moreover, the petitioner is having full knowledge of the transactions. Therefore, the petitioner sought time to appear for the personal hearing. Even to instruct his representatives on facts, the petitioner ought to verify the records and instruct, for which he needs time. Therefore, this Court is of the considered opinion that since the Hon'ble Division Bench has granted 60 days time, that cannot be cited as reason for declining adjournment, when an assessee is seeking adjournment based on his illness and medical treatment. Further, it is seen that 60 days time was granted to the respondents to issue notice and thereafter 90 days time was granted for passing orders and hence the reasons cited by the respondents is erroneous.

4. Therefore, this court is setting aside the impugned order. The petitioner is directed to submit his reply within a period of one (1) month from the date of receipt of a copy of this order. On receipt of such reply, the respondents shall fix the personal hearing date and intimate the same to the petitioner. The petitioner shall not take any further adjournment. However, the petitioner is directed to deposit Rs.2,00,000/- (Rupees Two Lakhs only) in 2 installments to the respondents. The 1st installment shall be paid on or before 20.06.2023 and the 2nd installment shall be paid on or before 27.06.2023.

5. In view of the above, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.05.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

Note: Issue Order Copy on 15.05.2023

To

1. The Deputy Commissioner of CGST and Central Excise,
Madurai-II Division,
Central Revenue Buildings,
V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002.

2. The Assistant Commissioner,
Office of the Deputy Commissioner of CGST
and Central Excise,
Madurai-II Division,
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V.P.Rathinasamy Nadar Road,
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Madurai – 625 002.

S.SRIMATHY, J.

Nsr

W.P.(MD).No.11631 of 2023

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