BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.14067 of 2023
and
W.MP(MD).No.11899 of 2023

M/s.Toptech Engineering Company Pvt Ltd.,
No.2/144, Venmamkondan Main Road,
Managathi Village,
Udayarpalayam (T.K),
Ariyalur-621804. ... Petitioner

Vs.

1.The Office of the Assistant Commissioner of GST and Central Excise,
Trichy II Division, No.1, Williams Road,
Cantonment,
Trichirapalli-620 001.

2.The Superintendent,
Central Excise,
Goods and Service Tax,
No.5, Opilathamman Koil Street,
Ariyalur.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the 1st Respondent in order-in-original No.51/2022-ST dated.30.09.2022 and quash the same as illegal, arbitary without jurisdiction and against the principal of Natural Justice.

For Petitioner : Mr.V.Illanchezian

For Respondents : Mr.N.Dilipkumar
Standing Counsel

ORDER

The petitioner has moved this Court seeking for the issue of writ of certiorari calling for the records of the first respondent in order-in-original No.51/2022-ST, dated 30.09.2020 and quash the same as the same, according to the petitioner, is illegal, arbitrary, without jurisdiction and against the principles of natural justice.

2.The facts that have been set out in the affidavit filed in support of the writ petition are briefly narrated herein below:-

(i) The petitioner would contend that he is a Labour Contractor, who supplies manpower to M/s.Ultra Tech Cement Ltd., (herein after called as 'the Company') Kedipalayam Unit, Ariyalur District. During the period 01.04.2016 to 30.06.2017, the petitioner had supplied labours to the said cement company. These labourers were shown to be on the rolls of the petitioner as secondary employees. For the period from 09.04.2016 to 31.07.2016, the petitioner had not charged the service tax from the company, since the company had undertaken to pay the service tax on behalf of petitioner to the authorities. Though service tax was raised for the period from 01.08.2016 to 30.06.2017 in the petitioner's bills, the petitioner was under the *bona fide* belief that this service tax was being remitted by the company.

(ii) In the above circumstances, the petitioner was surprised to receive the letter from the first respondent dated 22.07.2021 seeking an explanation from him recording the discrepancy between the gross value in income tax return and Service Tax-3 return for the period from April, 2016 to June, 2017. The petitioner had sent reply on 03.09.2021 and on 09.09.2021 explaining their difficulty and sought a month's time to submit their explanation. This was followed by a show cause notice No. 24/2021-ST DT, dated 20.010.2021, in which it was proposed to estimate the taxable value at Rs.3,17,62,294/- for the period from

01.04.2016 to 30.06.2017 and corresponding tax of Rs.47,64,344/- apart from interest penalties. The first respondent called upon the petitioner to indicate their desire for the personal hearing. The petitioner had sent a letter seeking 15 days time to reply. Vide reply dated 16.12.2021, the petitioner had given a detailed reply including the documents and sought further time to get documents and also requested for personal hearing. The petitioner had also taken steps to get documents from the company.

(iii) While so, on 30.09.2022, the petitioner was served with the impugned order, a reading of which, would indicate that the respondents have not furnished the reply and that he has not attended the personal hearing. The petitioner would submit that he has not received any of the personal hearing notices and that apart his reply has not been considered. Therefore, there is a violation of the principles of natural justice, which constrained the petitioner to approach this Court.

3. The grounds filed would also primarily deal with the violation of principles of natural justice.

4. When the matter had come up for admission on 15.06.2023, the Department had taken notice through counsel and this Court had orally instructed the respondents to submit documents to show that the petitioner was given a personal hearing/notices for personal hearing. Today, when the matter came up, the respondents submitted the documents, which shows that the respondents had sent notices on 12.07.2022, 13.07.2022, 26.07.2022, 27.07.2022, 23.08.2022 and 30.08.2022. The last one of the personal hearing notices has been served on the petitioner. Further the respondents would submit that the reply dated 16.12.2021 has not been received by the respondents and it is only a letter dated 22.11.2021 that had been received by the respondents on 24.11.2021, in which, the petitioner has only sought for time to file his reply as he was sick and admitted in the hospital for treatment. The entire arguments of the petitioner is based on the fact that this letter dated 16.12.2021 with documents has not been considered at all by the respondents and that they have not been given a personal hearing.

5. Heard the learned counsel appearing on either side and perused the records.

6.A perusal of the letter dated 16.12.2021 would indicate that this letter has not been given to the respondents, but it has been received at the Office of the Superintendent of GST and Central Exercise, though the show cause notice has been issued by the first respondent herein. The petitioner has not appeared for the personal hearing. Further, the petitioner has not personally appeared before the first respondent though notices in advance has been issued to him. Therefore, the contents of the impugned order which states that there was no reply from the petitioner and that he has not attended the personal hearing, are confirmed. Since the writ petitioner has moved the writ petition on the ground of violation of principles of natural justice and as there is no serious challenge to the order on merits, I see no reason to interfere with the order. That apart, even according to the very statement of the petitioner, he has not paid service taxes, but he has included the same in his bills.

7. For the aforesaid reasons, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

P.T.ASHA, J.

cp

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