BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23483 of 2023
and
W.M.P.(MD).No.19764 of 2023

Tvl.NCR Security Services,
Represented by its Partner,
R.Nithyananthsiva ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The State Tax Officer (FAC),
Aruppukottai Assessment Circle,
Commercial TaxesOffice,
No.28/4, Nadar Street,
West Car Street,
Aruppukottai – 626 101. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in GSTIN-33AAMFN0372L1Z4/2021-22 dated 16.03.2023 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.A.K.Manikkam,
Special Government Pleader.

ORDER

This Writ Petition is filed to quash the order dated 16.03.2023, passed by the second respondent.

2. The respondents have relied on the statement of a third person who is no way connected to the assessee. The second respondent has issued a personal hearing notice dated 21.01.2023 by fixing the date of personal hearing on 30.01.2023. Due to ill health, the petitioner could not appear on the fixed date. But the petitioner has submitted a reply to the show cause notice explaining the fact that he was providing cleaning, house-keeping and security services to the Educational Institutions and the same is exempted. The second respondent issued subsequent personal hearing notices on 07.02.2023 and 28.02.2023. But the petitioner has sought adjournment by citing his illness. Hence, the petitioner could not attend the personal hearing and consequently he could not substantiate his claim by evidence.

3. Since the petitioner was ill, he could not attend the personal hearing. Moreover, the petitioner is claiming that his service would come under exempted service. Therefore, in order to grant one more opportunity, this Court is inclined to quash the impugned order. Accordingly, the impugned order is quashed. The respondents are directed to grant one more opportunity of personal hearing to the petitioner. The petitioner without taking further adjournment, shall attend the hearing. The petitioner shall submit all evidence which he intended to rely on. Thereafter, the respondents shall pass a fresh order.

4. It is seen that the respondents have appropriated the entire tax amount, penalty as well as the interest through the petitioner's bank account. Therefore, there was no loss to the respondents. Hence, the respondents are directed to conduct an enquiry and thereafter pass fresh orders. The entire exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

5. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

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

To

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S.SRIMATHY, J.

Nsr

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