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W.P.Nos.3051 & 3053 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.3051 & 3053 of 2024 &
W.M.P.Nos.3330, 3332, 3338 and 3339 of 2024

S.Rajasekaran ... Petitioner in both writ petitions

Vs.

1.The Assistant Commissioner (ST),
Shevapet Circle,
3rd Floor, Commercial Taxes Office Building,
Pitchards Road, Hastampatti, Salem - 636 007.

2.The Deputy State Tax Officer - 2, Shevapet Circle,
3rd Floor, Commercial Taxes Office Building,
Pitchards Road, Hastampatti,
Salem - 636 007.

... Respondents in both writ petitions

Prayer in W.P.No.3051 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the second respondent in GSTIN No.33AAVPR4026N1Z3/2017-18, dated 18.12.2023 and quash the same as erroneous and illegal and being violative of principles of natural justice.

Prayer in W.P.No.3053 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in GSTIN No.33AAVPR4026N1Z3/2017-18, dated 19.12.2023 and quash the same as erroneous and illegal and being violative of principles of natural justice.



W.P.Nos.3051 & 3053 of 2024

For Petitioner in
both writ petitions : M/s.C.Rekha Kumari

For Respondents in
both writ petitions : Ms.Amirta Poonkodi Dinakaran
Government Advocate (Taxes)

COMMON ORDER

The prayer in these writ petitions is to quash the orders dated 18.12.2023 and 19.12.2023, respectively, on the grounds that they are erroneous, illegal, and violative of the principles of natural justice.

2. The learned counsel for the petitioner submitted that the impugned order dated 18.12.2023 is liable to be set aside as it was passed without affording the petitioner an opportunity for a personal hearing. Regarding the impugned order dated 19.12.2023, it was contended that the same demand had already been raised by another authority, making the order of 19.12.2023 a duplication of the demand. The learned counsel further submitted that the petitioner did not file a reply to the show cause notice because two separate notices were issued by different officers for the same assessment year, causing confusion. As a result, the petitioner was unaware of the second notice and could not respond in time. It was also submitted that the entire tax amount had already been recovered through the



W.P.Nos.3051 & 3053 of 2024

attachment of the petitioner's bank account. Therefore, the petitioner sought an opportunity to file a reply and be heard before any further proceedings by the respondent.

3. *Per contra*, the learned Government Advocate (Taxes) appearing for the respondent submitted that the order dated 18.12.2023, which is challenged in W.P.No.3051 of 2024, has been withdrawn by virtue of an order dated 12.02.2024, as for the same year and for the same defect, two demands were raised by different officers. However, insofar as W.P.No.3053 of 2024 is concerned, the learned Government Advocate contended that the show cause notice was duly issued, and no reply was filed by the petitioner. The impugned order was, therefore, passed as a consequence of the petitioner's failure to respond. It was further submitted that the tax amount had already been recovered, and the impugned order was passed based on the available facts. The learned Government Advocate, therefore, prayed for appropriate orders.

4. I have heard the learned counsel on either side and perused the materials available on record.



W.P.Nos.3051 & 3053 of 2024

WEB COPY

5. After careful consideration of the submissions and examination of the materials on record, it is evident that the petitioner's failure to respond to one of the show cause notices was primarily due to confusion arising from the issuance of two notices for the same assessment year by two different officers. This confusion appears to be genuine and not an intentional avoidance on the part of the petitioner. It is also significant to note that the entire tax amount has already been recovered through the attachment of the petitioner's bank account, leaving no pending tax liability. Given these circumstances, this Court finds that the petitioner should have been given a fair opportunity to address the second notice before any adverse order was passed.

6. In view of the letter dated 12.02.2024 issued by the Assessment Officer, State Tax Department, Sevapet, withdrawing the demand in respect of the writ petition in W.P.No.3051 of 2024, it is clear that the said writ petition has become infructuous. The demand was withdrawn because two different officers raised demands for the same issue and assessment year. As the demand has been withdrawn, W.P.No.3051 of 2024 is dismissed as infructuous.



W.P.Nos.3051 & 3053 of 2024

WEB COPY

7. Insofar as W.P.No.3053 of 2024 is concerned, the petitioner has contended that the impugned order dated 19.12.2023 was passed without an opportunity for a personal hearing. Given the confusion surrounding the issuance of multiple notices for the same year and the fact that the petitioner has already paid the tax amount, it is only just and fair to allow the petitioner an opportunity to file a reply and present their case before a fresh order is passed. Therefore, in the interest of justice, this Court is inclined to set aside the impugned order dated 19.12.2023 and direct the respondent to provide the petitioner with a proper opportunity to be heard. Accordingly, the following directions are issued:

(i) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks from the date of receipt of this order.

(ii) Upon filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a clear 14-day notice for a personal hearing and thereafter, the respondent shall pass appropriate orders on merits and in accordance with the law as expeditiously as possible.



W.P.Nos.3051 & 3053 of 2024

WEB COPY

8. In the result, W.P.No.3051 of 2024 is dismissed as infructuous, and W.P.No.3053 of 2024 is disposed with the above directions. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

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