IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.08.2024

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.5346 of 2024
and
W.M.P.Nos.5871 & 5873 of 2024

M/s. Ghanial Trading Pvt. Ltd.,
rep.by its Managing Director,
Mr.Mohammed Ghani, S/o. Aliahamed,
No.93/11, New College Complex,
Peters Road, Royapettah,
Chennai – 600 014. ...Petitioner

Vs.

The State Tax Officer,
O/o. The Commercial Tax Office,
Royapettah Assessment Circle,
Room No.206, Second Floor,
Farm Village, South Tower, Nandanam,
Chennai – 600 035. ...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records pertaining to the impugned order dated 23.09.2023 passed by the respondent in GSTIN/33AACCG9117F1ZV/2017-18 and to quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

Order

The challenge in this Writ Petition is to the order dated 23.09.2023 passed by the respondent and to quash the same.

2. Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner would submit that pursuant to the show cause notice issued by the respondent, the petitioner has filed reply and after the filing of reply, the respondent is supposed to issue a notice of personal hearing, in terms of Section 75 (4) of the Tamil Nadu Goods and Service Tax Act, in the event, the respondent intends to confirm the demand proposed in the show cause notice. However, in the present case, without providing such notice of personal hearing, the impugned order came to be passed against the petitioner. Therefore, the learned counsel contended that the impugned order suffers from violation of principles of natural justice, and prays for setting aside the same.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader (T) for the respondent admitted that after the receipt of reply from the petitioners, no opportunity of personal hearing was provided to them, however, he fairly submitted that if any order is passed by this Court, the same would be complied with by the department.

4. I have given due considerations to the submissions made on either side and perused the materials available on record.

5. In the present case, the respondent issued a Notice in Form DRC-01A dated 27.05.2023, to which, the petitioner submitted their reply dated 19.06.2023, however, the respondent, being not satisfied with the said reply, issued a show cause notice reiterating the same proposal contained in the notice dated 27.05.2023 and proceeded to confirm the proposals contained thereunder by passing the impugned order, which is against the provisions of Section 75 (4) of the TNGST Act, inasmuch as, an opportunity of hearing ought to have been granted, where any adverse decision is contemplated against taxpayer (petitioner in this case). Therefore, this Court is of the view that the impugned order passed by the respondent is in sheer violation of principles of natural justice and has to be set aside.

5.1 In the light of the above, this Court is inclined to pass the following order:-

i) The impugned order passed by the respondent dated 23.09.2023 is set aside.

ii) Consequently, the matter is remitted back to the respondent for fresh consideration, who shall fix a date for personal hearing and hear the petitioner in person and peruse the records and redo the assessment in accordance with law.

6. In the result, the Writ Petition is allowed on the aforesaid terms No costs. Consequently, connected Miscellaneous Petitions are closed.

16.08.2024

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Index : yes/no
Neutral Citation : yes/no

To

The State Tax Officer,
O/o. The Commercial Tax Office,
Royapettah Assessment Circle,
Room No.206, Second Floor,
Farm Village, South Tower, Nandanam,
Chennai – 600 035.

<u>Krishnan Ramasamy,J.,</u>

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W.P.No.5346 of 2024

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