IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.08.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.8704 of 2024
and
W.M.P.Nos.9723 & 9727 of 2024

Mr.Krishaswamy Ramanathan Rajagopalan
Proprietor of Tvl.Rohit Builders,
Flat No.Ga.No.22, Swathi Court,
Vijayaraghava Road, T.Nagar,
Chennai, TN- 600 017. ...Petitioner

Vs.

1. The State Tax Officer,
RS-1, Intelligence-I,
PAPJM Building, No.1, Greams Road,
1st Floor, Chennai – 600 006.

2. The Commercial Tax Officer,
Chennai Central Tamil Nadu, State/UT
PAPJM Building No.1, Greams Road,
1st Floor, Chennai – 600 006. ...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the first respondent bearing the GSTIN : 33AACPR8108A1Z6/2017-18 dated 29.12.2023, and the impugned summary order passed by the second respondent issued in Form DRC-7 dated 30.12.2023 bearing Reference Number ZD3312232697476 directing the petitioner to pay a sum of Rs.2,99,25,035/- tax along with interest and penalty to quash the same and to direct the respondents not to enforce the impugned order issued by the respondents.

For Petitioner : Mr.R.Rajagopalan

For Respondents : Mrs.K.Vasanthamala
Government Advocate (T)

ORDER

The challenge in this Writ Petition is to the order dated 29.12.2023 passed by the first respondent and the summary order passed by the second respondent dated 30.12.2023, whereby, the petitioner was directed to pay a sum of Rs.2,99,25,035/- tax along with interest and penalty to quash the same and to direct the respondents not to enforce the impugned order issued by the respondents.

2. The facts of the case in short is that, due to non-filing of returns, owing to outbreak of Covid-19, the petitioner's GST Registration was canceled suo moto w.e.f. 01.08.2021. At the time of cancellation of registration, there was no tax dues payable by the petitioner, and that, since the petitioner's business was badly affected, the petitioner did not take any steps for restoration of GST Registration, however, all of a sudden, the petitioner had come to know only after the oral intimation from the respondents that impugned orders have been passed in pursuance of the DRC-01A on 08.09.2023 and summary of the show cause notice in Form DRC-01 on 23.09.2023. Hence, the present Writ Petition.

3. Mr.R.Rajagopalan, the learned counsel appearing for the petitioner would submit that the petitioner is a senior citizen and do not know to operate the Computer and on line services independently without anyone's help, and that, since all the communications with regard to cancellation and impugned orders were merely uploaded in the GST Portal, the petitioner failed to give reply to those notices, apart from the same, since the petitioner's GST Registration was cancelled, the petitioner could not access the GST Portal and that the petitioner had come to know only after the oral intimation from the respondents that the impugned order has been passed in pursuance of the DRC-01A on 08.09.2023 and summary of the show cause notice in Form DRC-01 on 23.09.2023. Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and are liable to be set aside, as the petitioner has not been afforded with any opportunity of personal hearing. However, the learned counsel would submit that in the event, this Court is inclined to set aside the impugned orders, the petitioner is agreeable to pay 10% of the disputed tax amount, and hence, prayed for appropriate orders.

4. Mrs.K.Vasanthamala, learned Government Advocate (T) for the respondents justified the order passed by the respondents by stating that since the petitioner failed to file GST returns, the petitioner's GST registration certificate has been cancelled suo motu with effect from 01.08.2021, thereafter, a notice in DRC-01A was issued to the petitioner on 08.09.2023, which was followed by a summary of show cause notice dated 23.09.2023, since, to none of the notices, the petitioner has responded, impugned orders came to be passed against the petitioner, thereby, confirming the demand made in the show cause notices. However, the learned Government Advocate fairly submitted that if the petitioner is ready and willing to deposit 10% of the disputed tax, then, the prayer sought for by the petitioner may be considered.

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

6. On perusal of records, it is crystal clear that the impugned orders came to be passed against the petitioner, without affording any opportunity of hearing, as the respondents have not taken any steps to serve any notices/communications, particularly, show cause notice/notice of hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, the petitioner was not aware any such notices, and only when the respondent contacted the petitioner over phone, and intimated about the tax dues pursuant to the notice issued in the months of September, 2023, the petitioner became aware; and the petitioner, being a Senior Citizen is not well accustomed with the Computer so as to operate the system and view on line services independently without anyone's help, obviously, there wouldn't have been any occasion for the petitioner to view the GST Portal then and there.

7. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned orders and this is sufficient to hold that the impugned orders are nothing but ex parte orders, which are unsustainable in the eye of law and the notices/communications, which were merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, can no longer be deemed to be a sufficient service.

8. In the light of the above findings, this Court is inclined to pass the following orders;-

i) The impugned order passed by the first respondent dated 29.12.2023 and the consequential recovery proceedings issued by the second respondent dated 30.12.2023 are set aside.

ii) The matter is remanded back to the respondent for fresh consideration.

iii) It is made clear that the impugned order is set aside subject to the condition that the petitioner deposits 10% of the disputed tax (as agreed by the petitioner) within a period of four weeks from the date of receipt of a certified copy of this order.

iv) Thereafter, the petitioner shall file reply to the show cause notice within two weeks and after the filing of reply, the respondent-State Tax Officer is directed to provide personal opportunity of hearing by issuing clear 21 days notice and after hearing the petitioner in full, shall pass necessary orders in accordance with law.

9. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected W.M.P.No.9723 of 2024, viz., Dispense

With Petition is ordered and W.M.P.9727 of 2024, Stay Petition is closed.

16.08.2024

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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