IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.10818 & 10823 of 2024
and
W.M.P.Nos.11926, 11927, 11934 & 11935 of 2024

Senthilkumar,
Sole Proprietor of VSD Agro Inputs
No.9, Ginning Factory Road,
Modachur Road, Gobichettipalayam,
Erode 638 476. ...Petitioner in both W.Ps'

Vs.

1. The Deputy Commercial Tax Officer,
Gobichettipalayam Assessment Circle,
Erode.

2. The Branch Manager,
UCO Bank, Gobichettipalayam Branch,
No.22, Modachur Road,
Erode-638 452. ... Respondents in both W.Ps'

Prayer in W.P.10818 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records leading to the issuance of assessment order in GSTIN:33CQMPS0372P1Z7 dated 25.09.2023 passed by the First Respondent herein and quash the same.

Prayer in W.P.10823 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records leading to the issuance of bank attachment notice bearing reference

GSTIN:33CQMPS0372P1Z7/2019-20 dated 15.03.2024 by the first respondent herein to the second respondent and quash the same.

(Appearance in both W.P.s')

For Petitioner : M/s.S.P.Sri Harini

For Respondent 1 : Mr.V.Prashanth Kiran
Government Advocate (T)

COMMON ORDER

Since the issue involved and the relief sought in both these Writ Petitions are identical in nature, the same were heard together and are disposed of vide this common order.

2. Challenging the impugned assessment order dated 25.09.2023 passed by the first respondent and consequential Bank attachment notice dated 15.03.2024 passed by the first respondent to the second respondent, the petitioner has filed these Writ Petitions.

3. The learned counsel for the petitioner submitted that the petitioner was filing returns regularly until Covid lockdown. Since the business faced huge loss due to Covid outbreak, the petitioner was unable to run the business. The petitioner was filing NIL returns, and therefore, GST registration was cancelled suo-motu by an order dated 12.08.2022 on the ground that the

petitioner filed NIL returns for more than six months. The petitioner did not revoke the cancellation as he had closed down the business due to huge loss. The first respondent being fully aware of the cancellation of Registration, had uploaded a notice in Form ASMT-10 followed by a summary show cause notice on 23.12.2022 on the GST common portal for the assessment year 2019-2020. Further, the first respondent issued another summary show cause notice, which has also been uploaded on the same day in the GST common portal. Since the registration was cancelled, the petitioner did not log into the GST portal. As the petitioner had no knowledge about the same, the petitioner failed to submit its reply. Under these circumstances, the present impugned assessment order dated 25.09.2023 came to be passed by the first respondent, without receiving reply and without affording an opportunity of personal hearing to the petitioner. He further submitted that even the impugned orders were uploaded in the GST portal and the physical version of such orders were not served on the petitioner. Pursuant to the impugned assessment order dated 25.09.2023, the petitioner received a copy of the Bank attachment notice dated 15.03.2024 issued by the first respondent to the second respondent, on account of recovery proceedings.

3.1. The learned counsel for the petitioner had produced the communication letter dated 20.05.2024, stating that the first respondent has dropped the proceedings, since the subject matter is pending before this Court for revising the said assessment order. Hence, she sought for appropriate orders from this Court for affording an opportunity to the petitioner to present its case by way of filing a suitable reply and to participate in the proceedings.

4. The learned Government Advocate appearing for the first respondent would submit that due to non-filing of the returns, the GST registration of the petitioner was cancelled and the same was uploaded on the GST common portal. However, the petitioner failed to reply to the said show cause notice. Further, he would submit that some proceedings was dropped, since the present Writ Petition is pending before this Court and the same will be revised subject to the outcome of these Writ Petition.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the first respondent and perused the materials available on record.

6. Considering the submission made by the learned counsel on either side, it is made clear that since Covid lockdown, the petitioner is not doing any business activities and there is no business transaction, the petitioner filed "Nil" returns and it is discontinued. Therefore, that is the reason, the petitioner's

GST registration was cancelled for non-filing of the returns continuously. It is not disputed by the petitioner that the show cause notice was issued for the Tax period April 2019-March 2020. Since the petitioner closed down the business activities, he had no occasion to gone through the GST common portal. As submitted by the learned counsel for the petitioner, without any reply and personal hearing opportunity, the impugned order came to be passed by the first respondent.

7. By virtue of the proceedings dated 16.08.2024, stating that the action initiated for the defects are dropped, in view of the pendency of the Writ Petitions before this Court. This Court held that without any reply and personal hearing opportunity to the petitioner, the impugned came to be passed by the first respondent. Considering the facts and circumstance of this case, it would be appropriate to remand the matter to the respondent for fresh consideration. While remanding the matter afresh, the first respondent is directed to issue the Show Cause Notice to the petitioner thereby effecting physical service as well as by RPAD by mentioning the address of the petitioner.

8. Accordingly, this Court is inclined to pass the following orders:-

(i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration in respect of the impugned assessment period. While setting aside of the impugned order, this Court directs the first respondent to issue 21 days clear notice to the petitioner to file the reply to the said show cause notice.

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

(iii) Considering the fact that the impugned order itself is set-aside, nothing survives in the attachment order passed by the first respondent dated 15.03.2024, and hence it is ordered to be lifted. Therefore, the concerned Bank is directed to de-freeze the petitioner's Bank account immediately upon the production of the copy of this order, in case, if the petitioner's Bank account is attached.

9. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
jd

To
1. The Deputy Commercial Tax Officer,
Gobichettipalayam Assessment Circle,
Erode.

2. The Branch Manager,
UCO Bank, Gobichettipalayam Branch,
No.22, Modachur Road,
Erode-638 452.

Krishnan Ramasamy,J.,
jd

W.P.Nos.10818 & 10823 of 2024

21.08.2024