IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11625 of 2024
and
W.M.P. Nos.12716 & 12717 of 2024

China Petroleum Pipeline Bureau India (P) Ltd,
Rep.by its Authorised signatory,
Mr. Naresh Thungathurthi ... Petitioner

Versus

The Deputy Commercial Tax Officer,
Manali Assessment Circle,
Manali, Tiruvallur,
Tamil Nadu. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 3012.2023 bearing No.ZD331223279511N passed by the respondent upholding the demand of Rs.1,40,89,606/- raised against the petitioner, quash the same and consequently, remand the matter to the respondent for re-adjudication of the demand raised and issuance of a fresh speaking order in a time bound manner after granting the petitioner an opportunity for personal hearing.

For Petitioner : Mr. Thriyambak J Kannan
For Respondent : Mr. T.N.C. Kaushik,
Additional Government Pleader (Tax)

ORDER

An order dated 30.12.2023 is assailed on the ground that such order is non-speaking and that a personal hearing was not provided to the petitioner.

2. Proceedings were initiated against the petitioner by issuing a show cause notice 07.09.2023. The petitioner's replied thereto on 04.10.2023 by enclosing documents. In response to reminder notice dated 30.11.2023, the petitioner replied on 07.12.2023. The impugned order was issued in these circumstances.

3. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the petitioner's reply was referred to therein, but the order does not contain any discussion of the petitioner's reply or record reasons for rejecting the same. He also submits that a personal hearing was not provided.

4. Mr. T.N.C. Kaushik, learned Additional Government Pleader, accepts notice for the respondent. By referring to the impugned order, he

points out that about eight documents were requested for on verification of the petitioner's reconciliation statement. He further submits that the tax proposal was confirmed because the petitioner did not provide all the documents.

5. On perusal of the impugned order, it is noticeable that the reply of the tax payer was adverted to therein. Thereafter, the following finding was recorded:-

> *"The reply filed by the taxable person has been considered and accepted after verifying the above Statements. But the taxable person not submitted Proper documents and evidence the above defects. Hence this Office DRC 01 is confirmed."*

The above extract discloses that there is no discussion with regard to the reply of the petitioner. No reasons are recorded as to why such reply was rejected except for stating that proper documents were not provided. The petitioner appears to have provided the audited financial statements, tax audit report, Form 26AS, trial balance and the reply. In view thereof, the impugned order is unreasoned and cannot be sustained.

6. It should also be noticed that sub-section(4) of Section 75 of the

applicable GST enactments mandates that a personal hearing be provided either if requested for or if an order adverse to the tax payer is proposed to be issued. Such statutory prescription was also not adhered to in this case.

7. For reasons set out above, the impugned order dated 30.12.2023 is set aside and the matter is remanded to the respondent for reconsideration. The respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply.

8. W.P.No.11625 of 2024 is disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.04.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: No
klt

To

The Deputy Commercial Tax Officer,
Manali Assessment Circle,
Manali, Tiruvallur,
Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J.

klt

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