IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11877 of 2024 and
W.M.P.Nos.12966 & 12967 of 2024

Karthikeyan K ... Petitioner

Versus

The Commercial Tax Officer,
Coimbatore, Tamil Nadu. ...Respondent

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to call for the records on the file of the Respondent in its impugned proceedings of the respondent order for the Assessment Year 2018-19 in Form GST DRC-07 bearing Ref No.ZD330224051861P dated 09.02.2024 and quash the same.

For Petitioner : Mrs. R. Hemalatha

For Respondent : Mr. V. Prashanth Kiran,
Government Advocate (Taxes)

ORDER

By this writ petition, order in relation to assessment period 2018-19 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand.

2. The petitioner received an intimation dated 07.09.2023. This was followed by a show cause notice dated 19.10.2023. Upon receipt of personal hearing notice dated 21.11.2023, the petitioner replied requesting for further time since a tax audit was being undertaken. Thereafter, upon receipt of personal hearing notice dated 05.12.2023, the petitioner replied requesting for 30 days' time on account of the ill health of the petitioner's father. The impugned order dated 09.02.2024 was issued in these facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the petitioner's mail dated 01.02.2024 and pointed out that the petitioner had enclosed proof of the ill health of his father. In spite of such mail, she contends that the order impugned herein was issued within a week thereafter without responding to the petitioner. Therefore, she seeks another opportunity. She also submits, on instructions, that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.

4. Mr. V. Prashanth Kiran, learned Government Advocate, accepts notice on behalf of the respondent. He points out that the proposed tax liability was communicated to the petitioner as early as in September 2023. He further submits that the petitioner had the opportunity to respond on merits from September 2023 until February 2024. He also points out that personal hearings were offered on at least three occasions to the petitioner. In effect, he submits that principles of natural justice were adhered to.

5. By reply dated 27.11.2023, the petitioner cited the on going tax audit as the reason for requesting for an adjournment. In the subsequent letter dated 01.02.2024, the ill health of the petitioner's father was cited. As contended by learned Government Advocate, the petitioner had sufficient time between September 2023 to February 2024 to submit a reply on merits. The petitioner failed to do so. At the same time, it should be noticed that the petitioner has submitted the health records of his father while seeking further time in February 2024. In these facts and circumstances, the petitioner should be provided an opportunity to contest the tax demand on merits, albeit by putting the petitioner on terms.

6. For reasons set out above, the impugned order is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand within three weeks from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is also permitted to submit a reply to the show cause. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter a issue fresh order within three months from the date of receipt of the petitioner's reply.

7. W.P.No.11877 of 2024 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

30.04.2024

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

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To

The Commercial Tax Officer,
Coimbatore, Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J.

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