IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.13330 of 2024
AND
W.M.P.Nos.14488 & 14489 of 2024

D.Prasanna .. Petitioner

Vs

The Assistant Commissioner,
O/o.the Assistant Commissioner of GST & Central Excise,
Puducherry Division – II, 14, Municipal Street,
Reddiyarpalayam, Puducherry – 605 010. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in relation to the Order in Original No.04/2023 (ST) dated 29.08.2023 and the same was signed on 29.08.2023 in DIN NO.20230859XQ0000616251 on the file of the Respondent and quash the same as it is in gross violation of principles of natural justice judicial discipline is arbitrary, perverse and violate of Articles 14 and 19(1)(g) of the Constitution.

For Petitioner : Mr.M.Narasimha Bharathi

For respondents : Mr.Rajendran Raghavan
Senior Standing Counsel

O R D E R

This writ petition is filed challenging the impugned order dated 29.08.2023 of the respondent thereby initiating recovery proceedings against the petitioner.

2. The learned counsel appearing for the petitioner would submit that the impugned Order has been passed without providing opportunity of personal hearing to the petitioner. Therefore, the impugned Order has been passed in violation of principles of natural justice. Hence, the same is liable to be set aside.

3. Per contra, learned Senior Standing Counsel appearing for the respondent, would submit that ample opportunity has been provided to the petitioner. He would further submit that initially personal hearing opportunity was granted to the petitioner on 15.03.2023 and the petitioner failed to appear on 15.03.2023. Since the petitioner failed to appear for personal hearing, by a letter dated 12.04.2023, the petitioner was onceagain requested to file reply on or before 20.04.2023 and personal hearing opportunity was also provided on that date. However, the petitioner failed to appear on the date. A letter was

sent by the petitioner on 27.04.2023 requesting 8 weeks time to file his reply. However, no reply was filed by the petitioner even after lapse of 8 weeks. Hence, the impugned Order came to be passed on 29.08.2023. Therefore, he would submit that in the present case, there is no fault on the part of the respondent and opportunity of personal hearing was provided to the petitioner and as the petitioner failed to file his reply and appear for personal hearing, the impugned Order came to be passed. As alternative remedy of appeal is availble to the petitioner, requested this Court to pass appropriate Order.

4. I have given due consideration to the submissions of the learned counsel for the petitioner as well as the learned standing counsel for the respondent.

5. Originally, the show cause notice was issued to the petitioner on 23.12.2020. The same was challenged before this Court in W.P.No.24996 of 2019 [batch of cases] and the Writ Petitions were diposed of by this Court with a direction to the petitioners to file a reply. Accordingly for filing reply by the petitioner and for personal hearing date was fixed on 15.03.2023. As the petitioner has not appeared before the respondent on 15.03.2023, a letter was sent by the respondent calling upon the petitioner to file a reply on or before

20.04.2024 and personal hearing has also been fixed on the said date. Even on the said date, petitioner has not appeared for the hearing. Thereafter, it appears that the petitioner has sent a letter to the respondent seeking 8 weeks to file his reply. Even after expiry of 8 weeks, as the petitioner has not filed his reply, the impugned Order came to be passed. The respondent has accommodated the petitioner for two occassation for personal hearing and for filing his reply. But the petitioner has failed to avail the opportunity provided by the respondent. Hence, there is fault on the petitioner and the respondent cannot be blamed for the same. Under these circumstances, this Court is not inclined to entertain the plea of the petitioner. As alternative remedy is available to the petitioner, the petitioner is at liberty to prefer appeal before appropriate forum.

6. At this stage, the learned counsel appearing for the petitioner submitted that the appeal time has already been expired and time may be given to the petitioner for preferring appeal, for which the learned Standing Counsel has no objection.

7. Accordingly, this Court passes the following order:-

(i) This Writ Petition is dismissed.

(ii) 30 days from the date of receipt of a copy of this Court is granted to petitioner to prefer the appeal before the appropriate forum and the authorities shall take the appeal on file without insisting on limitation, if the appeal is, otherwise, in Order.

There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

04.09.2024

vrc

Index : Yes/No
Neutral Citation : Yes/No

Note : Issue Order Copy on 09.09.2024

To

The Assistant Commissioner,
O/o.the Assistant Commissioner of GST & Central Excise,
Puducherry Division – II, 14, Municipal Street,
Reddiyarpalayam, Puducherry – 605 010.

KRISHNAN RAMASAMY, J.

vrc

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