IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :22.08.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.14403 & 14404 of 2024
and
W.M.P.Nos.15654 & 15655 of 2024

Nocsmart Software Solutions Pvt. Ltd.,
rep. by its Director,
Mr.K.R.Satheesh Kumar ...Petitioner
No.1/2 PMR Layout, Second Street,
Poongothai Nagar, Civil Aerodrome post
Citra, Coimbatore – 641 014.

Vs.

1 The Deputy Commissioner Of Central Gst
And Central Excise,
Coimbatore II DIVISION,
1441, ELGI BUILDING, TRICHY ROAD
Coimbatore-641 018.

2 The Branch Manager Axis Bank
Ltd Vigneshwara Cresta,
No.1095, Avinashi Road,
Pappanaickanpalayam Stop
Saravanampatti Coimbatore - 641 037

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records leading to the issuance of Order-in-Original No.84/2022-ST (DC) dated 23.09.2022 issued by the First Respondent herein and quash the same.

For Petitioners : M/s.S.P.Sri Harini
For Respondent-1 : Mr.T.Ramesh Kutty
Senior Standing Counsel

Common Order

By consent, the Writ Petition is taken up for final disposal. Since the issue involved in both the Writ Petitions is interlinked, the same were heard together and disposed of by this Common Order.

2. The challenge in the Writ Petitions is to the Order-in-Original dated 23.09.2022 passed by the first respondent and the consequential bank attachment notice dated 20.04.2024 and to quash the same.

3. M/s.S.P.Sri Harini, learned counsel appearing for the petitioner would submit that though the Order-in-Original, impugned in W.P.No.14403 of 2024 was passed as early as on 23.09.2022, the same was received by the petitioner through e-mail only on 31.07.2024, therefore, the petitioner was not aware as to what has happened earlier, which culminated in the impugned order; that though in the impugned order, dated 23.09.2022 there is reference to the show cause notice dated 25.07.2019 and 10.02.2021, the petitioner has not been issued with any such notice, therefore, the petitioner was not in a position to file reply and appear before the respondent-Department, only when the petitioner's bank account was made non operational from 02.05.2024, the petitioner came to know about the impugned order dated 23.09.2022 and that in pursuance of the impugned order dated 23.09.2022 bank attachment order was issued by the first respondent 20.04.2024 to the second respondent-Bank, the petitioner has immediately rushed before this Court by way of the present Writ Petitions for setting aside the same, since, the impugned order dated 23.09.2022 has been passed without even granting an opportunity of personal hearing to the petitioner, nor calling for any reply from the petitioner, the same suffers from violation of principles of natural justice.

4. Per contra, Mr.T.Ramesh Kutty, learned Senior Standing Counsel for the first respondent justified the impugned order dated 23.09.2022 passed by the first respondent, firstly, by contending that the show cause notice was served on the petitioner's Auditor, since, no reply for was forthcoming nor the petitioner appeared before the respondent during the personal hearing, the first respondent is constrained to pass the impugned order dated 23.09.2022 ; secondly, it is contended that the respondent-Department also took steps to serve the impugned order through physical mode by addressing the same to the petitioner's address, however, the same returned with an endorsement', ' No such person', and therefore, the impugned order was sent to the petitioner's e-mail address finally on 31.07.2024.

5. Refuting the aforesaid contention, the learned counsel appearing for the petitioner would submit that initially, the petitioner-Company was registered under the provisions of the Service Tax Act during which period, the petitioner has authorized the Auditor as his Official Representative, but subsequent to the introduction of GST regime, the petitioner got registered under the provisions of the GST Act, however, the petitioner failed to authorize the Auditor for GST matters, at which point of time, show cause notice was issued by the first respondent to the petitioner's Auditor, which the Auditor failed to inform the petitioner. Therefore, it is contended that since the petitioner has authorized the Auditor only in respect of Service Tax Matters, the Auditor failed to inform about the show cause notice issued with regard to the GST issue, hence, the petitioner was not aware of the same, hence, could not file reply nor appear before the respondent-Department for personal hearing.

5.1 As regards the contention of the first respondent that the impugned notice sent to the petitioner was returned is concerned, the learned counsel for the petitioner would submit that upon introduction of GST regime, the petitioner has not only got registration under the provisions of the GST Act but also shifted their place of business from AGT Business Park, Avinashi Road, Coimbatore to PMR Layout, Second Street, Poongothai Nagar, Civil Aerodrome post Citra, Coimbatore and petitioner also intimated the change of business premises both to the first respondent-Department as well as through GST Portal and the Department also issued and uploaded amended registration certificate in the on-line GST Portal on 05.06.2020; but, the respondent-Department had sent the impugned order to the petitioner's old address, hence, the petitioner was not aware of the impugned proceedings. However, learned counsel for the petitioner fairly submitted that, in the event, the petitioner files Statutory Appeal, the petitioner is bound to deposit 7.5% of the disputed tax, and therefore, prayed that if this Court is inclined to set aside the impugned order and remand the matter back to the first respondent for fresh consideration, then, the petitioner is ready and willing to deposit 7.5% and thus, prayed for appropriate orders.

6. In reply, the learned Senior Standing Counsel for the first respondent would submit that if this Court is inclined to remand the matter for re-consideration by setting aside the impugned orders, then, the petitioner may be directed to deposit 50% of the disputed tax.

7. Heard Mr.S.P.Sri Harini, learned counsel appearing for the petitioner and Mr.T.Ramesh Kutty, learned Senior Standing Counsel, who takes notice on behalf of the first respondent and perused the materials available on record. Considering the nature of order that is to be passed in this Writ Petitions, this Court is of the view that the second respondent-Bank need not be served with any notice.

8. On perusal of records, it is seen that initially, petitioner herein was registered under the provisions of the Service Tax Act, during which period, the petitioner has appointed an Auditor as his Authorized representative in respect of Service matters; however, subsequent to the introduction of GST regime, though the petitioner got registered under the provisions of the GST Act and also shifted their place of business from AGT Business Park, Avinashi Road, Coimbatore to PMR Layout, Second Street, Poongothai Nagar, Civil Aerodrome post Citra, Coimbatore, the petitioner failed to give authorisation as regards GST matters, during which point of time, the show cause notice was served on the petitioner's Auditor and for the reasons best known to the Auditor, the same was failed to be brought to the notice of the petitioner. Therefore, the petitioner was not in a position either to give reply to the show cause notice nor appear before the first respondent for the personal hearing. However, the first respondent, assuming that the show cause notice was served on the petitioner's Auditor, without waiting for reply from the petitioner, confirmed the proposals contained in the show cause notice and passed the Order-in-Original dated 23.09.2022, which is impugned in W.P.No.14403 of 2024.

8.1 As far as the contention of the first respondent that the impugned order was served, however, the same returned with an endorsement, "No such Person", is concerned, as noticed above, that subsequent to the introduction of GST Regime, the petitioner shifted their business premises and when the fact remains that the petitioner also intimated about change of business premises both to the first respondent-Department as well as through GST Portal, the respondent ought to have served the impugned order to the petitioner's new address and not to the old address. Therefore, it is crystal clear that it was only owing to the fault on the part respondent-Department, the petitioner became unaware of the entire proceedings and was not in a position to respond to such notices, this Court is of the view that the petitioner is entitled to the relief sought for in both the Writ Petitions.

9. Accordingly, this Court is inclined to dispose of both the Writ

Petitions with the following directions:-

i) The Order-in-Original dated 23.09.2022, impugned in W.P.No.14403 of 2024 is set aside and the matter is remanded back to the first respondent for fresh consideration, however, the same is subject to the payment of 7.5% of the disputed tax by the petitioner within a period of four weeks from the date of receipt of a certified copy of this order;

ii) After making the aforesaid payment, the petitioner is directed to file reply within a period of two weeks there from, and upon receipt of reply from the petitioner, the first respondent shall issue a Notice for personal hearing of the petitioner, granting 14 days' time and after hearing the petitioner in full, shall pass necessary orders in accordance with law.

iii) As and when the petitioner makes the payment of 7.5% of the disputed tax, the petitioner shall approach the second respondent-Bank, and produce the certified copy of this order along with necessary proof as regards the payment made in respect of the disputed tax, based on which, the second respondent is directed to take necessary steps for de-freezing the petitioner's bank account forthwith.

10. In the result, both the Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.08.2024

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Index : yes/no
Neutral Citation : yes/no

Note : Registry is directed to mark a copy of this order to the second respondent as and when certified copy of this order is made ready.

To

1 The Deputy Commissioner Of Central Gst
And Central Excise,
Coimbatore II DIVISION,
1441, ELGI BUILDING, TRICHY ROAD
Coimbatore-641 018.

2 The Branch Manager Axis Bank
Ltd Vigneshwara Cresta,
No.1095, Avinashi Road,

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Krishnan Ramasamy,J.,

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