IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15640 of 2024
and
W.M.P.Nos. 17031, 17035 & 17039 of 2024

M/s. Fashion Point Handloom Park,
Rep. by its Partner,
Mr. J. C. Sivaprkash. ... Petitioner

Versus

1.The Deputy State Tax Officer,
Sathyamangalam Assessment Circle,
Erode.

2.The State Tax Officer/Commercial Tax Officer,
Sathyamangalam Assessment Circle,
Erode.

3.The Branch Manager,
Kotak Mahindra Bank Limited,
No.1 Park Avenue Kumaran Nagar,
Avinashi Road,
Tirupur – 641 603. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in GSTIN No.33AAEFF6584G1ZD/ 2019-2020 dated 30.1.2024 and the connected order under Section 73 dated 30.1.2024 and the summary of the order in GST DRC-07 dated 30.1.2024 passed in Reference No.ZD330124146975C and quash the impugned proceedings as passed contrary to the provisions of the CGST/ TNGST Act, 2017, without granting personal hearing as contemplated under Section 75(4) of the CGST/TNGST Act, 2017 and so passed in violation of principles of natural.

For Petitioner : Mr. P. Rajkumar

For R1 & R2 : Mr. C. Harsha Raj,
Additional Government Pleader (Tax)

ORDER

An assessment order dated 30.01.2024 is assailed on the ground that the documents submitted by the petitioner were not taken into consideration and on the ground that the tax proposal was confirmed on a ground that was not raised in the show cause notice.

2. By asserting that the show cause notice and impugned order dated 30.01.2024 were not served on the petitioner by e-mail or post, the present writ petition was filed.

3. Pursuant to the notice dated 01.03.2022 in Form ASMT-10, an intimation and show cause notice were issued to the petitioner by the first respondent. Subsequently, the petitioner received an intimation dated 14.11.2023 from the second respondent. The petitioner replied to such intimation on 21.11.2023. The impugned order dated 30.01.2024 was issued in these facts and circumstances.

4. Learned counsel for the petitioner referred to the petitioner's reply dated 11.10.2023 to the show cause notice dated 14.12.2023. In spite of the petitioner submitting the documents mentioned therein, he submits that these documents were not taken into consideration. He also points out that proceedings were initiated in respect of the same issues by the second respondent by intimation dated 14.11.2023, and that upon receipt of the petitioner's reply dated 21.11.2023, such proceedings were dropped. Learned counsel further submits that the show cause notice referred to the mismatch between the petitioner's GSTR-3B returns and the auto-populated GSTR-2A, but did not refer to sub-section 4 of Section 16 of applicable GST enactments. By contrast, he submits that Section 16(4) was referred to and relied upon in the impugned order. He also points out that

the tax proposal pertaining to e-way bill mismatch was confirmed in spite of the petitioner stating that the two units are situated in the same premises and that the e-way bill requirement is not applicable. The last submission of learned counsel is that a personal hearing was not offered and that the reference to the personal hearing dated 28.06.2023 is not correct.

5. Mr. C. Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the first and second respondents. He points out that the impugned order was preceded by notice in Form ASMT-10 dated 01.03.2022, show cause notice dated 14.12.2022 and personal hearing notices. He also points out that the petitioner's reply dated 11.10.2023 by which documents were uploaded was taken note of.

6. The only reply in respect of proceedings initiated by the first respondent is the reply dated 11.10.2023. Apart from uploading a couple of documents, the petitioner failed to respond to the show cause notice. In the show cause notice, the tax proposal was founded on a mismatch between the petitioner's GSTR-3B returns and the auto-populated GSTR-2A. The impugned order refers both to Section 16(4) of applicable GST enactments

and to the mismatch. In those circumstances, interference is not warranted merely because Section 16(4) was also referred to. However, it is noticeable that the tax proposal in respect of all three defects dealt with in the impugned order were confirmed on account of the non-receipt of objections from the taxpayer. In those circumstances, albeit by putting the petitioner on terms, it is just and appropriate that the petitioner be provided an opportunity to contest the tax demand on merits.

7. For reasons set out above, the impugned order dated 30.01.2024 is set aside and the matter is remanded to the first respondent 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 said period, the petitioner is permitted to submit a reply to the show cause notice. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand was received, the first 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. On account of the assessment order being set aside, subject to the condition imposed herein,

the bank attachment is raised and the respondent is restrained from initiating or proceeding with garnishee proceedings.

8. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

18.06.2024

Index :No
Speaking
Neutral Case Citation : No

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