IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.16216 of 2024
AND
W.M.P. Nos.17757 & 17761 of 2024

Sri Kaveri Mills
represented by its Proprietor
M. Radhakrishnan
59/34 Karikalan Street
Ashokapuram
Veerappanchatram
Erode 638 004 .. Petitioner

Vs

The Assistant Commissioner of State Taxes (FAC)
Periya Agraharam Circle
Erode 638 005
Tamil Nadu ..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to detailed impugned order bearing reference no.33BGVPR6746J1ZJ/2017-18 dated 28.12.2023 along with Form GST DRC 07 bearing reference no.ZD331223266510U dated 29.12.2023 passed by the respondent and quash the same.

For Petitioner	Mr. G. Natarajan
For respondent	Mr. V. Prasanth Kiran Government Advocate (Taxes)

O R D E R

Challenging the assessment order dated 28.12.2023 passed by the respondent, this writ petition has been filed.

2. The learned counsel appearing for the petitioner submitted that the petitioner, who is engaged in the textile business, had not received any notice of personal hearing and therefore, he was not in a position to file a reply to the show cause notice. Since the petitioner is not a tech-savvy, he engaged a local consultant for the purpose of filing GST returns, who has given his phone number and e-mail id in the GST portal and hence, no communication from the respondent has reached the petitioner. Under these circumstances, an *ex parte* assessment order dated 28.12.2023, was came to be passed by the respondent, without an opportunity to the petitioner to file a reply and without affording personal hearing to the petitioner, is in gross violation of principles of natural justice.

3. It is also submitted by the learned counsel appearing for the petitioner that the petitioner came to know about the assessment order dated 28.12.2023, when the respondent initiated recovery proceedings against the petitioner. The learned counsel further submitted that the petitioner had Input Tax Credit to the

extent of about Rs.23,00,000/- and the tax liability is only about Rs.16,00,000/- and therefore, the petitioner may be permitted to utilise the Input Tax Credit for payment of 10% of the tax demand. Hence, he sought appropriate orders from this Court, for affording an opportunity to the petitioner to present the case by filing a suitable reply and participate in the proceedings as well as for utilising the Input Tax Credit.

4. The learned Government Advocate (Taxes) appearing for the respondent did not raise any objection to the above submission of the learned counsel for the petitioner.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) appearing for the respondent and perused the materials placed before this Court.

6. Considering the entire conspectus of the matter, this Court is inclined to set aside the assessment order dated 28.12.2023 passed by the respondent and accordingly, the same is set aside and the matter is remanded for reconsideration by the respondent, subject to the following conditions :

i. The petitioner shall utilise the Input Tax Credit for payment of 10% of the disputed tax demand, by submitting a representation to the respondent to that effect, within a period of four (4) weeks from the date of receipt of a copy of this order.

ii. Thereafter, the petitioner shall file a reply along with the required documents, if any, within a period of two (2) weeks.

iii. On filing of such reply by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, as expeditiously as possible, after hearing the petitioner.

With the above directions, this writ petition is disposed of. No costs. Connected W.M.P.s are closed.

20.08.2024

gya

Index : Yes/No
Neutral Citation : Yes/No

To

The Assistant Commissioner of State Taxes (FAC)
Periya Agraharam Circle

Erode 638 005
Tamil Nadu

KRISHNAN RAMASAMY, J.

gya

W.P.No.16216 of 2024

20.08.2024