IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17152 of 2024
and
W.M.P.Nos.18935 & 18936 of 2024

M/s. Speciality Pharmacy,
Rep.by its Managing Partner,
Shri. Selvarasu. ... Petitioner

Versus

1.The State Tax Officer (ST),
Velacherry Assessment Circle,
2nd Floor, Room No.234,
Integrated Building for Commercial Taxes and Regn. Dept,
South Tower, Nandanam, Chennai – 600 035.

2.The Assistant Commissioner (ST),
Velacherry Assessment Circle,
2nd Floor, Room No.234,
Integrated Building for Commercial Taxes and Regn. Dept,
South Tower, Nandanam,
Chennai – 600 035. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorarified Mandamus, to call for the records and quashing the impugned order bearing

GSTIN/33CFF6272D1Z8/2017-18 dated 26.12.2023 along with DRC-07 ref No. ZD3312231978950 dated 26.12.2023 passed by the First Respondent and consequently direct the Second Respondent to withdraw the bank attachment notice issued in Form GST DRC-13 dated 06.05.2024 as they are passed in violation of the principles of natural justice, and thus render justice.

For Petitioner : Mr. P. Gowtham,
for Mr. G. Natarajan

For Respondents : Mr. C. Harsha Raj,
Additional Government Pleader (Tax)

ORDER

An order in original dated 26.12.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. The petitioner states that the GST registration was cancelled by order dated 05.01.2023. Subsequent thereto, it is asserted that the show cause notice and other communications were uploaded in the GST portal, but not communicated to the petitioner through any other mode. On account of being unaware of proceedings, it is stated that the petitioner

could not contest the tax demand on merits.

3. Learned counsel for the petitioner submits that the confirmed tax proposal relates to a mismatch between the GSTR-1 and GSTR-3B returns. He submits that such mismatch was on account of a duplicate entry in the GSTR-1 return, which was initially filed on monthly basis for July 2017-18 and subsequently on quarterly basis for the periods of July, August and September. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr. C. Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. He points out that principles of natural justice were complied with by issuing intimation dated 20.09.2023, show cause notice dated 29.09.2023 and by offering a personal hearing. Apart from seeking time, he submits that no reply on merits was submitted by the petitioner.

5. On perusal of the impugned order, it is evident that the tax proposal was confirmed because the taxpayer failed to reply on merits to the show cause notice. By taking into account the fact that the registration certificate had been cancelled and the show cause notice and other communications were only uploaded in the GST portal, the interest of justice warrants that the petitioner be provided an opportunity to contest the tax demand on merits by putting the petitioner on terms.

6. Therefore, the impugned order dated 20.04.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand within 15 days from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is permitted to 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 a copy of the petitioner's reply. The petitioner asserts that the attachment was in respect of only the order impugned herein. In view of such order being set aside, the bank attachment is raised.

7. 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.

15.07.2024

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

klt

To

1.The State Tax Officer (ST),
Velacherry Assessment Circle,
2nd Floor, Room No.234,
Integrated Building for Commercial Taxes and Regn. Dept,
South Tower, Nandanam, Chennai – 600 035.

2.The Assistant Commissioner (ST),
Velacherry Assessment Circle,
2nd Floor, Room No.234,
Integrated Building for Commercial Taxes and Regn. Dept,
South Tower, Nandanam,
Chennai – 600 035.

SENTHILKUMAR RAMAMOORTHY,J.

klt

W.P.No.17152 of 2024
and
W.M.P. Nos.18935 & 18936 of 2024

15.07.2024