IN THE HIGH COURT of JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.17232 of 2024
and WMP.Nos.19009 & 19010 of 2024

Tvl. Srirenukambal Milk Centre,
Represented by its Proprietor N.Thirunavukarasu,
No.34, VGP Golden Beach,
South Avenue, Part VI,
Panayur, Chennai,
Tamil Nadu.
GSTIN: 33AHYPT2121Q1ZM … Petitioner

Vs.

The State Tax Officer,
O/o. The Commercial Tax Officer,
Kelambakkam Assessment Circle,
Room No.235. 2nd Floor, Intergrated Commercial and
Registration Department (South Tower),
Nandanam, Chennai,
Tamil Nadu – 600 035. … Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings of the respondent order for the Assessment year 2018-19 IN GSTIN : 33AHYPT2121Q1ZM / 2018-19 dated 08.03.2024 and the consequential DRC-07 order bearing Ref No.: ZD330324052233X dated 11.03.2024 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)

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ORDER

This Writ Petition is filed to call for the records on the file of the respondent in its impugned proceedings of the respondent order for the Assessment year 2018-19 IN GSTIN : 33AHYPT2121Q1ZM / 2018-19 dated 08.03.2024 and the consequential DRC-07 order bearing Ref No.: ZD330324052233X dated 11.03.2024 and quash the same.

2.Mr.T.N.C.Kaushik, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of both the parties, the main writ petition is taken up for disposal at the admission stage itself.

3.The petitioner is engaged in doing business under the Trade Name Tvl. Srirenukambal Milk Centre, registered under TNGST Act and allotted GSTIN No.33AHYPT2121Q1ZM, the petitioner is the Assesse on the files of the respondent at Kelambakkam Assessment Circle, Chennai, Tamil Nadu. The primary issue in filing this writ petition arises from the impugned order passed by the respondent under Section 73 of CGST Act 2017 for non-filing of Annual returns in Form GSTR-9 and GSTR-9C for the assessment year 2018-19. The petitioner has filed Monthly GSTR-1 and GSTR-3B returns for the Assessment year 2018-19. But failed to file Annual return in Form GSTR-9 and GSTR-9C under Section 44 of the TNGST Act 2017. In line with the above discrepancy, the respondent without issuing an mandatory intimation in Form GST DRC-01A as per Rule 142 (1A) of CGST Rules under Notification No.49/2019 dated 09.10.2019. The respondent issued a Summary of Show Cause Notice vide Form GST DRC – 01 proposing a late fee liability to the tune of Rs.3,30952/- under Section 73 of CGST Act, 2017. To the shock of the petitioner the respondent passed the final order contradicting DRC-01 order thereby proposing the late fee liability to the tune of Rs.2,12,800/- for non-filing of annual returns for the Assessment year 2018-19 under Section 47(2) of the TNGST Act 2017. To make the situation even more worse the respondent in the Annexure of the DRC-07 order demanded a late fee liability to the tune of Rs.3,96,813/- in CGST and Rs.3,96,813/- in SGST totaling to the tune of Rs.7,93,626/-. But whereas in the DRC-07 order the respondent proposed the tax liability to the tune of Rs.2,12,800/- contradicting annexure to DRC-07. The order passed by the respondent is vague in nature at it lacks clarity and erroneous in nature. Moreover the respondent without issuing a mandatory intimation in Form GST DRC-01A as per Rule 142 (1A) of CGST Rules under Notification No.49/2019 dated 09.10.2019 passed the final order for the Assessment year 2018-19. In view of this, the order passed by the Assessing Officer is against the principles of natural justice and liable to be quashed. The petitioner alleges that without application of mind the final order was passed by the Assessing Officer. It is very clear and evident from the Assessment Order that even the Assessing Officer is not having any clarity on demands raised. The respondent without applying his mind erred in passing the assessment order, the petitioner submits that Section 47(2) categorically states that the registered person who fails to furnish the return required under Section 44 by the due date is liable to pay late fee of the one hundred rupees for every day during which such failure continues subject to the maximum of an amount calculated at a quarter percent of his turnover in the State or Union Territory. The Assessing Officer failed to notice that the maximum late fee levy can be only on the total turnover of the petitioner and not on the number of days of delay. As per the provisions of the act, the respondent cannot demand late fee liability for both the options and giving options to petitioner to pay the late fees levy when the Act categorically mentions maximum limit in Section 47(2) of the Act. In the present case, as per quarter percent of the total turnover is Rs.82,738/- in CGST and Rs.82,738/- in SGST totaling to the tune of Rs.1,65,476/-. The maximum amount as prescribed under Section 47(2) of the Act. If the case is as such the respondent on the other option demanding the petitioner to pay the number of days in delay is Rs.1,06,400/- in CGST and Rs.1,06,400/- in SGST totaling to the tune of Rs.2,12,800/-, the value which is higher than maximum prescribed in quarter percent of the total turnover which is Rs.1,65,476/-. In this regard the order passed is grossly contradicting to Section 47(2) of the Act. Moreover the total value of levy of late fees amounting to Rs.7,93,626/- is contentious in nature. Hence the petition.

Challenging the order dated 08.03.2024 in which the respondent has reversed ITC on the ground of alleged mismatch between the GSTR2A and GSTR3B. The petitioner is in possession of certificate in accordance with Board's instructions dated 27.12.2022. The genuineness of the transactions is not in doubt. In such circumstances, the ITC cannot be disallowed on the ground of mere mismatch between the GSTR2A and GSTR3B. Hence the petition.

4.The learned counsel for the petitioner would submit that the order passed by the respondent is vague in nature at it lacks clarity and erroneous in nature. Moreover, the respondent without issuing an mandatory intimation in Form GST DRC – 01A as per Rule 142 (1A) of CGST Rules under Notification No.49/2019 dated 09.10.2019 passed the final order for the assessment year 2018-19. In view of this the order passed by the Assessing Officer is against the principles of natural justice and liable to be quashed. The petitioner relies on Judgment in the case of Skyline Automation Industries Vs. State of U.P. And Another (Allahabad High Court) demand order not sustainable without issuance of SCN and fair opportunity to respondent. The Hon'ble Allahabad High Court quashed the demand order passed in Form DRC – 07, by the Revenue Department, on the grounds that a notice in Part A of FORM GST DRC – 01A under Rule 142(1A) of Central Goods and Services Rules, 2017 ("the CGST Rules") was not issued. Hence that, subsequent reminder would not have cured inherent defect in proceedings initiated against the assessee as the initiation of proceedings itself are bad, thus, the order passed consequent thereto will also fail. The petitioner has not been served with a hard copy of the impugned order by the respondent. As the petitioner was unaware of the said notice uploaded in the GST portal, he failed to reply the said Show Cause Notice, which led to the passing of the present impugned order. Further, he would submit that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner. The petitioner came to know about the impugned order dated only through a phone call received from the respondent for intimation of tax dues and the entire existence of a demand for tax along with interest and penalty. Hence, he sought for appropriate orders from this Court for affording an opportunity to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate its case and also they agree to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

5.On the other hand, the learned Government Advocate appearing for the respondent would submit that the respondent has uploaded the notices in the GST Online Portal. But the petitioner failed to avail the said opportunity. He has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Further he submitted that subject to the payment of 10% of the disputed tax in respect of the impugned assessment period, this Court can remand the matter to the Authority concerned for passing appropriate orders.

6.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and also perused the materials available on record.

7.Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned show cause notice was uploaded on the GST Portal Tab. According to the petitioner, the petitioner was unaware of the issuance of the show cause notice through the GST Portal and the original of the said show cause notice was not furnished to them. In such circumstances, this Court is of the view that the impugned order came to be passed without affording any opportunity of personal hearing to the petitioner to establish its case, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

8.For the reasons stated above, this Court is inclined to set aside the impugned orders dated 08.03.2024 and the consequential order dated 11.03.2024 passed by the respondent with the following directions:-

(i) The impugned order dated 08.03.2024 and the consequential order dated 11.03.2024 are set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of disputed tax amount to the respondent within a period of four weeks from today (15.10.2024) and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of copy of this order.

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

9.With the above directions, this writ petition is disposed of. No costs.

Consequently, the connected miscellaneous petitions are also closed.

15.10.2024

Index : Yes / No
Internet : Yes / No
Speaking order/Non-speaking order
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To

The State Tax Officer,
O/o. The Commercial Tax Officer,
Kelambakkam Assessment Circle,
Room No.235. 2nd Floor, Intergrated Commercial and
Registration Department (South Tower),
Nandanam, Chennai,
Tamil Nadu – 600 035.

KRISHNAN RAMASAMY, J.

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