IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.19156 of 2024
and
W.M.P.No.21004 of 2024

TVL.CUURRO MOTORS,
Rep., by its partner G.Rajan,
A-13, Cuuro Motors, Third Phase, Industrial Estate,
Chennai 600 032. ...Petitioner

Vs.

1. The Appellat Deputy Commissioner (St)
   GST Appel, Chennai-II at No.1,
   PAPJM Building, Annex Building,
   Greams Road,
   Chennai 600 006.
2. The Deputy State Tax Officer,
   Guindy Assessment Circle,
   Room No.2538 and 255,
   2nd Floor, Integrated Commercial Taxes
   and Registration Building South Tower,
   Nandhanam, Chennai 600 035. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in connection with the order passed by the 2nd respondent in GSTN:33AAKFC0761G1ZR/2017-

2018 dated 31.12.2023 and quash the same as illegal and improper.

For Petitioner : M/S.Kingston Jerold
For Respondents : Mr.V.Prashanth Kiran
Government Advocate (T)

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorari to call for the records in connection with the order passed by the 2nd respondent in GSTIN:33AAKFC0761G1ZR/2017-2018 dated 31.12.2023 and quash the same as illegal and improper.

2. Heard M/S.Kingston Jerold, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Tax) for the respondents, who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

3. The contention of the learned counsel for the petitioner is that the petitioner-company is a registered partnership firm engaged in the field of providing a Motor car services and the petitioner-company is paying the tax promptly. However, the second respondent passed an order of Mismatch of

Liability in GSTR 3B and GSTR 01, Excess claim ITC in GSTR 2A vs GSTR 3B and interest payable all together levied a sum of Rs.13,52,573/-. The learned counsel would further submit that, the respondents have not served any proper notice about the filing for the financial year 2017-2018, claiming mismatch of Liability in GSTR 3B and GSTR 01. Without affording any opportunity to rectify the same by way of providing the relevant documents pertaining to the transaction, an impugned order came to be passed by the second respondent. Only when the recovery notice was issued by the second respondent, the petitioner came to know about the impugned order. At that time, the limitation period for filing an appeal also expired. Therefore, finding no other option, the petitioner has filed the present petition to quash the order passed by the second respondent, dated 31.12.2023.

4. On the other hand, Mr.V.Prashanth Kiran, learned Government Advocate appearing for the respondents, would contend that the respondents have provided opportunity to the petitioner and the petitioner also filed a reply to the show cause notice. Pursuant to which, the respondents sent almost three reminders to the petitioner to file objections and providing an opportunity of personal hearing. However, the petitioner failed to present his case. The learned

Government Advocate fairly submitted that subject to the deposit of 20% of the disputed tax demand by the petitioner in respect of the impugned assessment period, this Court can consider and pass appropriate orders.

5. Intervening at this stage, the learned counsel for the petitioner submitted that the petitioner agrees to make a payment of 20% of the disputed tax demand in respect of the impugned assessment period and the said submission is recorded.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents and perused the materials available on record.

7. In the present case, the learned Government Advocate for the respondents contended that three notices were issued to the petitioner. According to the petitioner, the petitioner was not aware of issuance of the notice and the documents related to the disputed transactions were not furnished to them. In such circumstances, this Court is of the view that the impugned order came to be passed, without affording an opportunity of

personal hearing to the petitioner to establish their 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, the impugned order dated 31.12.2023 is set aside on condition that the petitioner deposits 20% of the disputed tax amount in respect of the impugned assessment period within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of such deposit, the Assessing Officer shall fix a date for personal hearing and send a physical notice to the petitioner, and thereafter upon considering their objections shall pass fresh orders, on merits and in accordance with law, within a period of four weeks thereafter.

9. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.08.2024

Index : Yes / No
Speaking order : Yes / No
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To

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   GST Appel, Chennai-II at No.1,
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2. The Deputy State Tax Officer,
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   and Registration Building South Tower,
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Krishnan Ramasamy,J.,
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