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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19044 of 2024
WMP.Nos.20891 and 20893 of 2024

M/s.Kumbhat Holographics, represented by its
Partner, Park Town, Chennai-3 Petitioner

Vs

The Assistant Commissioner (ST)(FAC)
NSC Bose Assessment Circle, Chennai (North) Division
Chennai-3 Respondent

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the order dated 17.06.2023 in GSTIN:33AAFFK7513B1ZU/2019-20 passed by the Respondent and to quash the same.

For Petitioner : Mr.C.Rekhakumari

For Respondents : Mrs.K.Vasanthamala, Government Advocate

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order dated 17.06.2023 in GSTIN: 33AAFFK7513B1ZU/2019-20 passed by the Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner Company is an Assessee on the file of the Respondent and the Respondent issued show cause notices,

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dated 02.03.2023 and 12.04.2023, proposing to reverse Input Tax Credit through the GST Portal Tab “View Additional Notices and Orders”. Thereafter, the impugned order dated 17.06.2023 came to be passed, demanding tax with penalty and interest on the ground that the Petitioner did not send a reply to the show cause notice and also did not appear in person. The Petitioner was informed about all these proceedings only through the urgent notice dated 1512.2023, which was received by the Petitioner on 26.12.2023. Thereafter, the Petitioner filed a rectification Petition dated 04.03.2024, which is still pending. Hence, contending that since the impugned assessment order was passed, without affording an opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice, it is not sustainable, this Writ Petition has been filed.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.

4. The learned counsel for the Petitioner would submit that even though the Petitioner has been filing returns regularly, the impugned show cause notices were issued through the GST Portal Tab “View Additional Notices and Orders” and that the original of the same was not served physically on the Petitioner and hence, the Petitioner had no occasion to know about the issuance of the show cause notices and consequently, they could not file a

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reply and also could not appear for personal hearing, but however, the impugned order came to be passed, without affording an opportunity of filing a reply to the impugned show cause notice, including a personal hearing to the Petitioner, thereby violating the principles of natural justice and further, the revision filed by the Petitioner is pending without consideration so far. The learned counsel would further submit that the Petitioner would be able to establish their case if an opportunity is provided and that the Petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

5. The learned Government Advocate for the Respondents would submit that after having seen the show cause notice in the GST Online Portal, since the Petitioner did not respond, the impugned assessment order was passed, however, if this Court is satisfied, appropriate orders may be passed, by putting the Petitioner on terms.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is seen that admittedly the impugned show cause notices were issued through the GST Portal Tab "View Additional Notices and Orders" and the original copy of the same was not served physically on the Petitioner. When the Respondent Authority intends to pass an assessment order against an Assessee, it should be done only after affording an opportunity of filing a reply to the show cause notice, including a

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personal hearing to the Assessee and thereafter, considering the reply of the Assessee, as provided under law, but in this case, the Respondent Authority failed to do so. Further, the Petitioner herein was not in a position to notice about the issuance of show cause notice, since it was issued through the GST Online Portal and the original of the same was not served physically to the Petitioner. Consequently, the Petitioner was not able to send a reply and also to appear for personal hearing. According to the Petitioner, the Petitioner would be able to establish their case if an opportunity is provided. In such circumstances, this Court is of the view that the impugned order came to be passed, without affording opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice and further, the revision filed by the Petitioner is also not considered so far. In such view of the matter, it is just and necessary to provide an opportunity to the Petitioner to establish their case, on merits and in accordance with law, however, by putting the Petitioner on terms.

7. For the reasons stated above, the matter is remanded back to the Respondent for consideration afresh, by setting aside the impugned order on condition that the Petitioner shall pay 10% of the disputed tax demand, within a period of four weeks from the date of receipt of a copy of this order. Within the aforesaid period, the Petitioner is permitted to submit a reply to the

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impugned show cause notice, by enclosing all relevant documents. Upon receipt of such reply and upon being satisfied that 10% of the disputed tax demand was received, the Respondent is directed to provide a reasonable opportunity to the Petitioner, including a personal hearing and consider the reply along with the relevant documents to be submitted by the Petitioner and the revision and pass fresh orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of the Petitioner's reply.

8. With the above directions and terms, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

07.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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To

The Assistant Commissioner (ST)(FAC)
NSC Bose Assessment Circle, Chennai (North) Division
Chennai-3

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KRISHNAN RAMASAMY, J.

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