IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19270 of 2024
WMP.Nos.21136 and 21137 of 2024

M/s.B.S.Engineers and Suppliers, represented by
its Proprietor, Sridhar, Chennai-1 Petitioner

Vs

1. The Deputy Commissioner (ST)
GST-Appeal, Chennai-1, Greams Road, Chennai-6

2. The State Tax Officer, Broadway Assessment Circle
Vepery, Chennai-3 Respondents

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 05.10.2023 in Ref.No.ZD331023021575X of the 2nd Respondent and the order dated, 03.05.2024 in RC.No.1156 of 2024 of the 1st Respondent and to quash the same and consequently to direct the Respondents to give an opportunity of personal hearing.

For Petitioner : Mr.P.Suresh Babu

For Respondents : Mr.G.Nanmaran, Special Government Pleader

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 05.10.2023 in Ref.No.ZD331023021575X of the 2nd Respondent and the order dated,

03.05.2024 in RC.No.1156 of 2024 of the 1st Respondent and to quash the same and consequently to direct the Respondents to give an opportunity of personal hearing.

2. The case of the Petitioner is that the Petitioner is an Assessee on the file of the Respondents and that the 2nd Respondent issued show cause notices, dated 03.08.2023 and 08.09.2023 through the GST Online Portal, calling for objections. By the impugned order dated 05.10.2023, the 2nd Respondent confirmed the show cause notice. As against the same, the Petitioner filed an appeal before the 1st Respondent on 05.01.2024 with a delay of 90 days and the appeal was rejected by the 1st Respondent by the impugned order dated 03.05.2024 only on the ground of delay and not on merits. Hence, this Writ Petition has been filed, seeking the reliefs as stated above.

3. This Court heard the learned counsel on either side and also perused material records placed before this Court.

4. The learned counsel for the Petitioner would submit that the impugned show cause notices were issued through the GST Portal and that the originals of the same were 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 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. The learned counsel would further submit that the Petitioner came to know about the impugned orders only after initiation of recovery proceedings and that the appeal filed by the Petitioner was dismissed by the 1st Respondent only on the ground of delay and not on merits. In such circumstances, the learned counsel for the Petitioner seeks an opportunity to contest the tax demand on merits.

5. The learned Standing Counsel for the Respondents would submit that if this Court is satisfied, appropriate orders may be passed.

6. Upon examining the impugned orders, it is evident that the tax proposal was confirmed because the Petitioner failed to reply to the show cause notice or attend the personal hearing. The appeal was dismissed only on the ground of delay and not on merits. But, according to the Petitioner, the reason for not sending their objections to the show cause notices is that they were not aware of the notices issued through the GST Portal and the Petitioner would be able to establish their case if an opportunity is provided. In the opinion of this Court, the reasons stated in the affidavit appear to be genuine. In these circumstances, it is just and necessary to provide an opportunity to the Petitioner to contest the tax demand on merits by putting the Petitioner on terms.

7. In the above said facts and circumstances, the delay in filing the appeal is

condoned and the appeal is restored to the file of the 1st Respondent and the matter is remanded back to the 1st Respondent, by setting aside the impugned orders. The Petitioner is directed to file a reply along with necessary documents before the 1st Respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of such reply, 1st Respondent is directed to consider the appeal afresh and pass

KRISHNAN RAMASAMY, J.

Srcm

fresh orders, after providing a reasonable opportunity to the Petitioner, including a personal hearing, on merits and in accordance with law, within a period of eight weeks thereafter.

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
Srcm

1. The Deputy Commissioner (ST)
   GST-Appeal, Chennai-1, Greams Road, Chennai-6

2. The State Tax Officer, Broadway Assessment Circle
   Vepery, Chennai-3

WP.No.19270 of 2024