IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.19634 of 2024
and
W.M.P.Nos.21491 & 21493 of 2024

Dynamic Rajagiri Services,
Represented by its Partner Mr.Antony Tharu,
No.69/26, Room No.4,5,6,7,
1st Floor, Walltax Road,
Chennai, Tamil Nadu-600 079. ...Petitioner

Vs.

Deputy State Tax Officer,
Moore Market, Assessment Circle,
Integrated Commercial Taxes Building,
Chennai North Division,
No.32, Elephant Gate Bridge Road (Walltax Road),
Vepery, Chennai-600 003. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in the impugned order dated 27.01.2024 with reference GSTIN 33AACAD3667R1ZA/2019-20 in the files of the Respondent and quash the same as manifestly arbitrary, void, contrary and violative of Articles, 14, 19(1)(g) and 21 of the Constitution of India.

For Petitioner : Mr.S.Ramamurthy
for Kably Taiyab Khan K

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate (T)

ORDER

Challenging the order dated 27.01.2024 passed by the respondent, the petitioner has filed the present Writ Petition.

2. Mr.V.Prashanth Kiran, learned Government Advocate takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage.

4. Alleging that there is a mismatch of tax liability between GSTR 3B and GSTR9/9C for the financial year 2019-2020 filed by the petitioner, the respondent demanded the payment of differential amount along with interest and penalty in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that though the petitioner had submitted a reply to the show cause notice in Form DRC-06 dated 10.08.2023 on 27.09.2023 along with all the relevant documents viz., Audited balance sheet, Income tax return acknowledgement etc., the respondent

passed an impugned order dated 27.01.2024 as if no reply was filed by the petitioner. Further, he would submit that it was recorded in the order that the tax payer was given opportunity of personal hearing and despite that the tax payer has not appeared, hence the respondent has proceeded to pass the impugned order. The learned counsel for the petitioner would further submit that the present impugned order came to be passed without affording an opportunity of personal hearing and without considering the reply submitted by the petitioner. Since the impugned order violates Article 14, 19(1) (g) and 21 of the Constitution of India and the same has passed in an arbitrary manner, the learned counsel for the petitioner prayed for setting aside the impunged order passed by the respondent.

6. The learned Government Advocate appearing for the respondent admits that the reply to the show cause notice was filed by the petitioner, however, he submits that despite personal hearing opportunity provided to the petitioner, the petitioner has not chosen to appear before the respondent. Under these circumstances only, the present impugned order came to be passed. Hence, he submitted that any appropriate order may be passed by this Court.

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

8. On perusal of the impugned order shows that at one place the order records that the petitioner has filed the reply on 27.09.2023. The later portion of the order records that the petitioner has not filed the reply and also not appeared before the respondent despite affording an opportunity of personal hearing. Having regard to the admitted fact that the petitioner has filed the reply on 27.09.2023 and the impugned order came to be passed without hearing the petitioner, thereby violating the principles of natural justice, this Court is inclined to pass the following order:-

(i) The order impugned is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The respondent shall consider the reply filed by the petitioner along with relevant documents and issue a 14 days clear notice by fixing the date for 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. Accordingly, the Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

06.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
jd

To
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<u>Krishnan Ramasamy,J.,</u>
jd

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