IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19391 of 2024
WMP.Nos.21239 to 21241 of 2024
f

M/s.Sumathi Constructions, by its Proprietor
R.Chandrakannan, Chennai-13 Petitioner

Vs

The Deputy State Tax Officer-I,
Royapuram Assessment Circle, Chennai-3 Respondent

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 30.12.2023 in GSTIN:33ACSPC2077R1Z2/2017-18 and the order dated 30.12.2023 in Ref.No.ZD331223271963E of the 1st Respondent and to quash the same and consequently to direct the Respondent to entertain the records, documents and reply from the Petitioner and then pass order, after affording a personal hearing to the Petitioner.

For Petitioner : Mr.N.Hariharan

For Respondents : Mr.V.Prashanth Kiran, Government Advocate

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 30.12.2023 in GSTIN:33ACSPC2077R1Z2/2017-18 and the order dated 30.12.2023 in

Ref.No.ZD331223271963E of the 1st Respondent and to quash the same and consequently to direct the Respondent to entertain the records, documents and reply from the Petitioner and then pass order, after affording a personal hearing to the Petitioner.

2. The case of the Petitioner is that the Petitioner is a Works Contractor and that the Respondent issued a show cause notice, dated 17.08.2023, followed by a summary notice dated 18.08.2023, calling for objections, including a personal hearing notice dated 07.11.2023 giving only two days time through the GST Portal Tab “View Additional Notices and Orders”. Thereafter, the impugned orders dated 30.12.2023 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. By way of bank attachment, more 10% of the demanded tax amount i.e. a sum of Rs.47 lakhs and odd, out of Rs.1,19,63,700/-, was recovered by the Respondent. Hence, contending that since the impugned orders were 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 the impugned show cause notice was 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 notice 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 more than 10% of the demanded tax amount was recovered by the Respondent by way of bank attachment and that the Petitioner would be able to establish their case if an opportunity is provided.
5. The learned Government Advocate for the Respondents would submit that 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 notice and the personal hearing notice, giving only two days time, were issued through the GST Portal Tab "View Additional Notices and Orders" and the originals of the same were 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 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 and the personal hearing notice, since they were issued through the GST Portal Tab “View Additional Notices and Orders” and the originals of the same were not served physically to the Petitioner. Consequently, the Petitioner was not able to send a reply and also to appear for personal hearing. Further, according to the Petitioner, more than 10% of the demanded tax was recovered by the Respondent by way of bank attachment and 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 orders 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. 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.

7. For the reasons stated above, the matter is remanded back to the Respondent for consideration afresh, by setting aside the impugned orders. The Petitioner is permitted to submit a reply to the impugned show cause notice, by

enclosing all relevant documents within a period of two weeks from the date of receipt of a copy of this order.. Upon receipt of such reply, 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 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
Srcm

To

The Deputy State Tax Officer-I, Park Town Assessment Circle
Chennai North Division, Vepery, Chennai-3

KRISHNAN RAMASAMY, J.

Srcm

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