IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19429 of 2024
WMP.Nos.21276, 21280, 21282 and 21284 of 2024

M/s.Sakthi Jayavel Motors, by its Proprietor
T.A.Anandha Siva Sankar, Thiruvallur 602025 Petitioner

Vs

1. The Deputy State Tax Officer (ST)-2
   Thirumazhisai Assessment Circle, Chennai-123

2. The Assistant Commissioner (ST),
   Thirumazhisai Assessment Circle, Chennai-123

3. The Bank Manager, State Bank of India, Thiruvallur 602002

4. M/s.Nestle India Limited, Thiruvallur
   Tamil Nadu 601102 Respondents

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 purchased of the 1st Respondent dated 27.12.2023 in Form GST DRC-07 in Ref.No.ZD331223226598E and a detailed order dated 27.12.2023 in Ref.No.GSTIN;33AGAPA4601P1ZS for the assessment period 2017-18 of the 1st Respondent and to quash the same.

For Petitioner : Mr.B.Syed Abdul Wakeel

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

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the

records relating to the purchased of the 1st Respondent dated 27.12.2023 in Form GST DRC-07 in Ref.No.ZD331223226598E and a detailed order dated 27.12.2023 in Ref.No.GSTIN;33AGAPA4601P1ZS for the assessment period 2017-18 of the 1st Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner is carrying on the business of providing services for transportation of goods, which were taxable on reverse charge basis and therefore, there is no necessity for the Petitioner to report the same. The 1st Respondent issued a show cause notice, dated 11.07.2023, alleging mismatch in the amounts indicated in the relevant forms. The Petitioner sent a reply dated 18.07.2023. Thereafter, a detailed show cause notice dated 25.08.2023, followed by a summary show cause notice dated 31.08.2023 came to be issued. All these notices were issued through the Online Portal. Thereafter, the impugned orders 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. Hence, contending that since the impugned order was passed, without considering the reply of the Petitioner and without affording an opportunity of 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 notices were issued through the GST Online Portal and that the original 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 notice. However, on coming know about the same through recovery proceedings, they filed a reply, detailed about their business and liability. However, the impugned order came to be passed, without considering the reply of the Petitioner and without affording an opportunity of personal hearing to the Petitioner, thereby violating the principles of natural justice. The learned counsel would further submit 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 if this Court is satisfied, appropriate orders may be passed.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is seen that the Petitioner is carrying on the business of providing services for transportation of goods, which were taxable on reverse charge basis and the impugned show cause notices were issued through the GST Portal and the originals of the same were not served physically on the Petitioner. However, the Petitioner filed a reply to the show cause notice. However, in the impugned order there is no reference for

having considered the reply of the Petitioner and admittedly no personal hearing was given to the Petitioner. 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 personal hearing to the Petitioner and without considering the reply of the Petitioner, 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 1st Respondent for consideration afresh, by setting aside the impugned orders. The Petitioner is permitted to file a fresh reply along with necessary documents within a period of two weeks from the date of receipt of a copy of this order and on such reply being filed within the said period, the 1st Respondent is directed to consider the matter afresh and pass orders, after providing an opportunity of personal hearing to the Petitioner and considering the reply of the Petitioner, on merits and in accordance with law, within a period of eight weeks from the date of receipt of the Petitioner's reply. Consequently, the bank attachment proceedings are set aside.

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

KRISHNAN RAMASAMY, J.

Srcm

To

1. The Deputy State Tax Officer (ST)-2
   Thirumazhisai Assessment Circle, Chennai-123

2. The Assistant Commissioner (ST),
   Thirumazhisai Assessment Circle, Chennai-123

3. The Bank Manager, State Bank of India, Thiruvallur 602002

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