IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19437 of 2024
WMP.Nos.21286, 21287 and 21298 of 2024

M/s.Sri Vinayaga Traders, by its Proprietor
Subramanian Suresh, Chennai-79 Petitioner

Vs

1. The Commercial Tax Officer, Peddunaickenpet, North-II
   Chennai North-II, Chennai North Division, Chennai-3

2. The Assistant Commissioner (ST), Peddunaickenpet,
   Assessment Circle, Chennai-3

3. The Branch Manager, Canara Bank, Vepery, Chennai-112 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, 26.12.2023 in Ref.No.ZD3312232037030/2017-18 of the 1st Respondent and to quash the same and consequently, to direct the 2nd Respondent to defreeze the bank attachment notice in RC.No.33CFWPS8727M1ZB/2024, dated 25.04.2024 of the Petitioner-Registered Taxable Person.

For Petitioner : Ms.V.Vijayalakshmi

For Respondents : Mrs.K.Vasanthamala, 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, 26.12.2023 in

Ref.No.ZD3312232037030/2017-18 of the 1st Respondent and to quash the same and consequently, to direct the 2nd Respondent to defreeze the bank attach notice in RC.No.33CFWPS8727M1ZB/2024, dated 25.04.2024.

2. The Petitioner Company, which is engaged in the business of lubricant oil, was issued with a show cause notice, dated 09.09.2023, regarding turn over mismatch and another notice dated 19.09.2023 followed by three reminders, dated 09.11.2023, 20.11.2023 and 08.12.2023. It is stated that due to medical conditions, the Petitioner could not file a reply within time and also to appear for a personal hearing, though they are in possession of relevant documents. Thereafter, the impugned order dated 26.12.2023 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. The Petitioner came to know about the impugned assessment order only on coming to know to the bank account of the Petitioner was subjected to freezing through GST Online Portal. Hence, contending that the impugned order was passed, without affording an opportunity of filing a reply, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice, 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 though there were

two show cause notices followed by three reminders, due to medical conditions, the Petitioner could not file a reply along with necessary documents to establish their case, 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 would be able to establish their case if an opportunity is provided and that the Petitioner agrees to make a payment of 15% of the disputed tax demand in respect of the impugned assessment period.

5. The learned Government Advocate for the Respondents would submit that even after receipt of two show cause notices followed by three reminders sent by the Respondent authority, since the Petitioner did not file a reply to the show cause notice and also did not appear in person, the impugned assessment order was passed and 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 the impugned assessment order was passed without affording an opportunity to file a reply, including an opportunity of personal hearing, as is evident from the impugned order assessment order. There is no dispute about the service of show cause

notices and the subsequent reminders on the Petitioner. When the Respondent Authority intends to pass an assessment order and raise a demand, 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. The reason assigned by the Petitioner that due to medical conditions, the Petitioner was not able to send a reply and also to appear for personal hearing, in the opinion of this Court, appears to be genuine. 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 hence, 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 1st Respondent for consideration afresh, by setting aside the impugned orders on condition that the Petitioner shall pay 15% of the disputed tax demand, within a period of four weeks from the date of receipt of a copy of this order.

Within two weeks thereafter, the Petitioner is permitted to submit a reply to the 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 1st 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 thereafter, 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.

06.08.2024

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

To

1. The Commercial Tax Officer, Peddunaickenpet, North-II, Chennai North-II, Chennai North Division, Chennai-3

2. The Assistant Commissioner (ST), Peddunaickenpet, North-II, Chennai North-II, Chennai North Division, Chennai-3

3. The Branch Manager, Canara Bank, Vepery, Chennai-112

KRISHNAN RAMASAMY, J.

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