IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19443 of 2024
WMP.Nos.21294 and 21295 of 2024

M/s.KBS Moto, by its Partner, Devaraj Sathish Kumar
Chennai-95 Petitioner

Vs

The Superintendent of of GST and Central Excise
Range-II, Valasaravakkam Division, Chennai South
Commissionerate, Anna Nagar, Chennai-40 Respondent

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 order dated 28.12.2023 in DRC-07 in Ref.No.ZD331223232382X/2017-18 of the Respondent and to quash the same.

For Petitioner : Mrs.V.Vijayalakshmi

For Respondents : Mr.K.S.Ramaswamy, Sr. Standing Counsel

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order dated 28.12.2023 in DRC-07 in Ref.No.ZD331223232382X/2017-18 of the Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner Company is engaged in the business of maintenance and repair services and that the Respondent issued

a show cause notice, dated 20.09.2023 followed by a detailed notice dated 27.9.023. Since the Partner of the Petitioner Firm was not well, the Petitioner could not file a reply to the show cause notice. Thereafter, the impugned order 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 and the Petitioner came to know about the same only through the Respondent over phone. Hence, contending that since the impugned order was passed, without affording an opportunity of 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 to the impugned show cause notice, though the documents were available with the Petitioner, they could not file a reply since the Partner of the Petitioner Firm was not well, however, the impugned order came to be passed, without affording sufficient opportunity 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 10% of the disputed tax demand in respect of the

impugned assessment period.

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 the impugned order was passed without affording sufficient opportunity of personal hearing to the Petitioner. Further, the Petitioner herein was not in a position to file a reply due to the reason that the Partner of the Petitioner Firm was not well at that point of time. The said reason 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, 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 Respondent for consideration afresh, by setting aside the impugned order on condition that the Petitioner shall pay 10% of the disputed tax demand, within a period of four weeks from the date of receipt of a copy of this order. Within a period of two weeks, 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 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.

KRISHNAN RAMASAMY, J.

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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
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To

The Superintendent of of GST and Central Excise
Range-II, Valasaravakkam Division, Chennai South
Commissionerate, Anna Nagar, Chennai-40

WP.No.19443 of 2024