IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.23779 of 2024 &
W.M.P.Nos.26020 of 2024 & 26021 of 2024

M/s.S B Babu & Sons
Through Partner
428, M.T.H.Road, Avadi
Tiruvallur, Tamil Nadu - 054. ... Petitioner

Vs.

Assistant Commissioner (ST)
Avadi Assessment Circle
Integrated Commercial Taxes Building
Chennai North Division
No.32, Elephant Gate Bridge Road
(Wall tax Road), Vepery, Chennai 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ Of Certiorarified Mandamus to call for the records on the file of the Respondent in the Impugned Order dated 20.12.2023 under Section 73 of the TNGST Act and quash the same and direct the Respondents to provide an opportunity to be heard and decide in accordance with law.

For Petitioner : Ms.Anu Viswanath
For Respondents : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

This writ petition has been filed by the Petitioner challenging the Order of the Respondent dated 20.12.2023 under Section 73 of the TNGST Act and quash the same and direct the Respondents to provide an opportunity of hearing to the Petitioner and decide the same in accordance with law.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) takes notice on behalf of the respondent.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner submits thatall notices/communications were uploaded in the "Additional Notices" column in the GST portal and since the Petitioner is not aware of the same, he failed to file their reply to the show cause notice in time. While

so, without providing any opportunity to the petitioner, the respondent passed the impugned order dated 20.12.2023, demanding tax along with penalty and the same was also uploaded in the GST Portal and the Petitioner was also not aware of the same. The Petitioner came to know about the impugned order only after receipt of the recovery notice. He further submitted that since the petitioner had no transaction for the past four financial years, only nil return has been filed and therefore the consultants of the Petitioner Company had not accessed the Portal. He further submitted the impugned assessment order was passed without affording an opportunity of hearing to the Petitioner and therefore the same is in violation of the principles of natural justice and therefore he prays to set aside the same.

5. On the other hand, the learned Government Advocate (Taxes) would submit that the respondent uploaded the show cause notice in the GST Online Portal. But the petitioner failed to submit reply in time and therefore the impugned assessment order came to be passed.

6. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 10% of the demand made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Government Advocate (Taxes) has no serious objection.

7. Heard both sides. Perused the records.

8. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

9. In the present case, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order was

passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 20.12.2023 passed by the respondent. Accordingly, this Court passes the following order:--

(i) The order impugned herein is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall deposit 10% of the disputed tax to the respondent within a period of ***four weeks*** from the date of receipt of a copy of this order and the setting aside of the impugned orders will take effect from the date of payment of the said amount.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of 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.

8. Accordingly, this writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

21.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

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