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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19648 of 2024
WMP.Nos.21294 and 21295 of 2024

Raju Gomathi, Proprietor, Monomer Plastics
Chennai-50 Petitioner

Vs

The Assistant Commissioner (ST)(FAC),
Padi Assessment Circle, Nandanam, Chennai-35 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 of the Respondent relating to the order dated 29.04.2024 in Ref.No.ZD33042423101BU and to quash the same.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents : Mr.C.Harsha Raj, Additional Government Pleader

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records of the Respondent relating to the order dated 29.04.2024 in Ref.No.ZD33042423101BU and to quash the same.

2. The case of the Petitioner is that the Petitioner is an Assessee on the file of the Respondent and that Respondent issued a notice dated 08.02.2022 to reconcile the difference in turn overs, to which a reply dated 01.07.2022 was filed, stating that immediately after receipt of the notice, the Petitioner paid a

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sum of Rs.1,50,000/-, which is more than 10% of the disputed tax amount. Thereafter, the Petitioner filed a representation dated 29.01.2024, seeking for a personal hearing on 29.01.2024 to establish their case. However, without considering the said reply, the impugned order was passed on 29.04.2024. Hence, this Writ Petition has been filed, seeking the relief as stated above.

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 immediately after receipt of the show cause notice, the Petitioner paid a sum of Rs.1,50,000/- which is more than 10% of the disputed tax demand and that though the impugned show cause notice was issued for a sum of Rs.5.9 lakhs, the impugned order was passed for a sum of Rs.7.08 lakhs and hence, the impugned order was passed beyond the scope of the show cause notice and that though the Petitioner has sought for a personal hearing on 29.01.2024, by his representation dated 21.01.2024, it was not provided and hence, the impugned order is in violation of 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 Additional Government Pleader for the Respondents would submit that it is not that the Petitioner was not provided an opportunity of personal hearing on 29.01.2024 as per the representation of the Petitioner

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dated 21.01.2024 and that after providing such opportunity, the impugned order came to be passed and hence, 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 in the impugned order, it is stated that the reply was not accepted as the reply of the tax payer is not self explanatory and the tax payer has not attended the personal hearing to explain the difference. Only on 29.01.2024 the Petitioner has asked for personal hearing. The Respondent has not explained as to whether such personal hearing was provided or not. Even after providing such opportunity if the Petitioner did not avail the same, the Respondent ought to have afforded another opportunity . On a perusal of the impugned order, it is seen that there is not even a whisper about such opportunity being granted to the Petitioner, but it is merely state that the Petitioner did not attend the personal hearing. 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.

7. For the reasons stated above, the matter is remanded back to the Respondent for consideration afresh, by setting aside the impugned order. Within a period of two weeks from the date of receipt of a copy of this order, the Petitioner is permitted to submit a reply to the impugned show cause notice, by enclosing all relevant documents. Upon receipt of such reply, the Respondent is directed to provide a reasonable opportunity to the Petitioner, including a

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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

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date of receipt of the Petitioner's reply.

8. With the above directions, 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 Assistant Commissioner (ST)(FAC),
Padi Assessment Circle, Nandanam, Chennai-35

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