IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19638 of 2024
WMP.Nos.21498 and 21501 of 2024

M/s.Gulab Matching, by its Proprietor
Gulab Suda, Chennai-1 Petitioner

Vs

1. The Deputy Commissioner (ST), GST-Appeal,
Chennai-I, Chennai-6

2. The State Tax Officer, Kothawalchavadi Assessment Circle
Chennai-3 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 12.09.2023 in Ref.No.ZD3309230682369 passed by the 2nd Respondent and the order dated 04.04.2024 passed in RC.No.1289 of 2024 passed by the 1st Respondent and to quash the same and consequently to direct the Respondents to give an opportunity of personal hearing to the Petitioner.

For Petitioner : Mr.P.Suresh Babu

For Respondents : Mr.G.Nanmaran, Special Government Pleader

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 12.09.2023 in Ref.No.ZD3309230682369 passed by the 2nd Respondent and the order

dated 04.04.2024 passed in RC.No.1289 of 2024 passed by the 1st Respondent and to quash the same and consequently to direct the Respondents to give an opportunity of personal hearing to the Petitioner.

2. The case of the Petitioner is that the Petitioner Firm, which is engaged in the business of Woven Fabrics of Cotton, was issued with a show cause notice, dated 09.05.2023, for the alleged discrepancies found in the GSTR Return through the GST Online Portal. Thereafter, the 2nd Respondent passed the impugned order dated 12.09.2023, confirming the proposal contained in the said show cause notice. Since the Petitioner was not aware of the orders passed against the Petitioner, the Petitioner could not file an appeal in time. However, on coming to know about the action taken by the Respondents to collect the amount, the Petitioner filed an appeal before the 1st Respondent on 17.03.2024 with a delay of 65 days and the appeal was rejected on the ground of delay. Hence, this Writ Petition has been filed, seeking relief as stated above.

3. This Court heard the learned counsel on either side and also perused material records placed before this Court.

4. The learned counsel for the Petitioner would submit that the impugned assessment order was passed, without affording sufficient opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner, thereby violating the principles of natural justice. Since the

Petitioner was not aware of show cause notice issued through the GST Portal, they were not able to file their objections. The appeal filed by the Petitioner was dismissed by the 2nd Respondent only on the ground of limitation and not on merits. Hence, the learned counsel prays that by setting aside the impugned orders, if an opportunity is provided, the Petitioner would be able to establish their case on merits

5. The learned Special Government Pleader for the Respondents would submit that in the event if this Court is satisfied, appropriate orders may be passed.

6. Upon considering the submissions of the learned counsel on either side and the materials available on record, it is seen that admittedly the impugned show cause notice was issued through the GST Online Portal and the original of the same was not served physically on the Petitioner. When the Respondent Authority intends to pass an assessment order, 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. Further, the Petitioner herein was not in a position to notice about the issuance of show cause notice, since it was issued through the GST Online Portal and the original of the same was not served physically to the Petitioner. Consequently, the Petitioner was not able to send a reply and also to appear for personal hearing. According to the Petitioner, the Petitioner

would be able to establish their case if an opportunity is provided. Even the Appellate Authority also rejected the appeal only on the ground of delay and not on merits. In such circumstances, this Court is of the view that the impugned order of the 2nd Respondent 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 the impugned order of the 1st Respondent was also not on merits 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.

7. In the above said facts and circumstances, the delay in filing the appeal is condoned and the appeal is restored to the file of the 1st Respondent and the matter is remanded back to the 1st Respondent, by setting aside the impugned orders. The 1st Respondent is directed to take the appeal on record and consider the appeal afresh and pass orders, on merits and in accordance with law, after providing a reasonable opportunity to the Petitioner, including a personal hearing, within a period of eight weeks thereafter.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP are closed.

06.08.2024

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

To

The Assistant Commissioner (ST)(FAC)
Vepery Assessment Circle, Chennai-6

KRISHNAN RAMASAMY, J.

Srcm

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