IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.20017 of 2024
and
W.M.P.Nos.21917 & 21918 of 2024

Tvl.Elango Auto Electricals,
Rep. by its Proprietor Elangovan,
48/1, NA, 62/@ Alagappa Layout,
Pollachi, Coimbatore - 642 001.
GSTIN:33AAGPE0732P1ZU ... Petitioner

Vs.

Deputy State Tax Officer-1,
Office of the Deputy Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi - 642 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent herein in its impugned order passed by the respondent in the order Vide Form GST DRC - 07 in GSTIN: 33AAGPE0732P1ZU/2021-2022, dated 18.08.2023 and consequential order under Section 74 with Reference No.ZD3308231060700, dated 18.08.2023 for the Tax Period 2021-2022 and quash the same.

For Petitioner : M/s.R.Hemalatha

For Respondent : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

This writ petition has been filed challenging the order in Form GST DRC - 07 in GSTIN: 33AAGPE0732P1ZU/2021-2022 and the consequential order in Reference No.ZD3308231060700, dated 18.08.2023, passed by the respondent.

2. According to the petitioner, they are a registered dealer on the files of the respondent and GST Department. For the Financial Year 2021-2022, they filed monthly returns in GSTR 3B and GSTR 1 and duly paid tax liability. On scrutiny of the same, the respondent issued Form ASMT 10 dated 28.10.2022, calling upon the petitioner to explain the reasons for the difference of tax amount between GSTR 3B and GSTR 1 for the month of July, 2021, to which, the petitioner filed its reply on 01.11.2022 stating that there was some clerical error in GSTR 3B, but GSTR 1 was filed correctly. They also sought time for submitting the original bills. However, the respondent issued Form GST DRC 01A dated 01.02.2023 observing that the petitioner's reply dated 01.11.2022 was not satisfactory and therefore, further

action had been initiated. Consequently, show cause notice dated 23.03.2023 under section 74 came to be issued, determining the tax along with penalty at Rs.5,03,004/-. Upon receipt of the same, the petitioner filed its reply dated 23.03.2023 enclosing the necessary bills. Despite this, the respondent issued notices on 08.05.2023, 19.07.2023 and 02.08.2023 for personal hearing of the petitioner. Subsequently, the orders dated 18.08.2023 impugned in this writ petition, came to be passed by the respondent. Aggrieved by the same, the petitioner is before this court with the present writ petition.

3. The learned counsel for the petitioner submitted that the petitioner being a *bona fide* dealer, has been regularly filing its returns and paying the taxes in accordance with law. It is further submitted that for invoking section 74 of the TNGST Act, there should be an allegation of suppression of facts to evade tax, malafide intention, reasons of fraud, wilful mis-statement or mis-representation on the part of the assessee, which is absolutely absent in the present case. It is also submitted that the mismatch of GSTR 1 and GSTR 3B is purely a clerical error committed by the petitioner; however, the reason so adduced by the petitioner was not considered by the respondent solely on the ground that the petitioner had not replied within the stipulated time, whereas, according to the petitioner, the accountant, who ought to have filed

the reply, left his job and hence, the reply could not be filed within the time. Hence, the learned counsel prayed to direct the respondent to consider the reply submitted by the petitioner and grant one more opportunity to substantiate its claim.

4. On the other hand, the learned Government Advocate (Taxes) appearing for the respondent submitted that the petitioner did not file his reply nor appear before the respondent for personal hearing and hence, the respondent based on the available records, passed the orders impugned herein.

5. In response, the learned counsel for the petitioner submitted that the petitioner is now inclined to pay 15% of the disputed tax, within a time frame to be stipulated by this court, in the event of granting an opportunity to substantiate their claim before the respondent, for which, the learned Government Advocate (Taxes) appearing for the respondent has no serious objection.

6. Heard the learned counsel on either side and perused the materials placed before this court.

7. It is an admitted fact that there was a discrepancy in respect of tax liability of the petitioner in GSTR 1 and GSTR 3B for the month of July, 2021. According to the petitioner, they filed its reply dated 01.11.2022 to the notice issued under section 61 stating that there was a clerical error in GSTR 3B and GSTR 1 has been filed correctly and that, they also produced the necessary bills for the same. However, the respondent has not considered the same on the premise that the reply was filed beyond the stipulated time. Thus, it is evident that the respondent, without considering the reply submitted by the petitioner, passed the impugned orders, which are in violation of the principles of natural justice.

8. In view of the above, this court passes the following order:

(i) The orders impugned herein are set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay a 15% 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 pass appropriate orders on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner, as expeditiously as possible.

9. This writ petition is disposed of on the above terms. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

07.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
r n s

To

The Deputy State Tax Officer-1,
Office of the Deputy Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi - 642 001.

KRISHNAN RAMASAMY.J.,

r n s

W.P.No.20017 of 2014 &
W.M.P.Nos.21917 & 21918 of 2024

07.08.2024