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W.P.Nos.20032 & 20041 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.20032 & 20041 of 2024

and

W.M.P.Nos.21929, 21931, 21935 & 21938 of 2024

M/s.Vijay Bio Fertilizer and Co.,
Represented by its Proprietor S.Vijayabasker,
D.NO.9/963-4, Aravind Nagar,
C.A.K.Road,
Karur - 639 002.

... Petitioner in both writ petitions

Vs.

The State Tax Officer,
O/o.The Joint Commissioner (ST) (Intelligence),
Erode Division, Erode
Tamil Nadu.

... Respondent in both writ petitions

Prayer in W.P.No.20032 of 2024 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings of the respondent order for the Assessment Year 2020-21 in GSTIN : 33ACWPV6147K2ZP/2020-21, dated 05.04.2024 along with consequential order vide DRC-07 order bearing Ref.No.ZD330424049014U, dated 05.04.2024 and quash the same.

Prayer in W.P.No.20041 of 2024 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the



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records on the file of the respondent in its impugned proceedings of the respondent order for the Assessment Year 2019-20 in GSTIN : 33ACWPV6147K2ZP/2019-20, dated 05.04.2024 along with consequential order vide DRC-07 order bearing Ref.No.ZD3304240488476, dated 05.04.2024 and quash the same.

For Petitioner in
both Writ Petitions : M/s.R.Hemalatha

For Respondent in
both Writ Petitions : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

COMMON ORDER

In both these writ petitions, the petitioner challenges the assessment orders and the consequential orders dated 05.04.2024 passed by the respondent under section 74 of the TNGST and CGST Acts, 2017, for the assessment years 2019-20 and 2020-21 respectively.

2. It is the case of the petitioner that they are assessee on the files of the respondent at Erode Assessment Circle, Erode. Pointing out certain discrepancies, the respondent issued DCA -01A notices to the petitioner dated 02.01.2024. Alleging that the petitioner has not replied to the said notices, the respondent issued show cause notices in Form GST DRC 01 on



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08.02.2024 and directed the petitioner to pay the tax dues along with interest and penalty, or file their objections, if any, within a period of 30 days through GSTN Portal. Consequently, the respondent passed the orders in DRC - 07 thereby confirming the proposals in DRC 01, for the assessment years in question. Aggrieved by the same, the petitioner is before this court with the present writ petitions.

3. The learned counsel for the petitioner submitted that even after making payment through DRC-03 and replying to the notices sent with detailed clarification on all the alleged defects, the respondent without considering the same, has passed the assessment orders in violation of the principles of natural justice. It is also submitted that unlike GSTR 9, the GSTR 9C requires reconciliation statement with an annual turnover exceeding 5 crores, which has to be typically certified by the Chartered Accountant or Cost Accountant; and during the assessment year 2020-21, the prevalence of Covid-19 was very high, especially the second wave, most of the staff went on long leaves and the petitioner has to manage their business operations only with the available temporary staff; and hence, the reply was not filed in time. It is also submitted that due to pandemic Covid-19, the Government of India, Ministry of Finance, issued Notification No.40/2021 extending the time limit set for filing annual return in GSTR 9 and GSTR 9C, upto 28.02.2022 and



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hence, the petitioner was under impression that the local tax practitioner would have filed the mandatory returns, but the return was not filed on behalf of the petitioner. Thus, according to the learned counsel, the delay is neither wilful nor wanton. It is also submitted that the petitioner is now inclined to pay 15% of the disputed tax for each assessment year, if an opportunity is given to the petitioner to substantiate their claim before the respondent.

4. Heard the learned Additional Government Pleader (Taxes) appearing for the respondent who made his submissions to support the orders passed by the respondent. However, he has no serious objection for passing appropriate orders, by putting the Petitioner on terms.

5. It is the specific plea of the petitioner that despite making payments for certain defects and providing replies to all the discrepancies as identified, the respondent, without considering the same, proceeded to pass the final assessment orders under Section 74(1), which is in violation of the principles of natural justice. That apart, the petitioner stated that due to Covid-19 pandemic situation, minimal staff were working, which adversely affected their business operations, including filing of returns within the time frame. However, the petitioner is intending to pay 15% of the tax demanded for



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each assessment year, in the event of granting an opportunity to them to file their replies along with the required documents to the respondent.

6. In view of the above, it is just and necessary to set aside the orders impugned herein and consequently, direct the respondent to provide an opportunity to the Petitioner and thereafter, take a decision on merits and in accordance with law, however, on terms. Accordingly, this court passes the following order:

(i) The orders impugned herein are set aside and the matters are remanded to the respondent for fresh consideration on condition that the petitioner shall pay 15% of the disputed tax for each Assessment year viz., 2019-20 and 2020-21 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.



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7. This writ petitions are 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

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KRISHNAN RAMASAMY.J.,

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