IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.20476 of 2024
and
W.M.P.Nos.22428, 22432 & 22436 of 2024

Iraiarul Engineering Promoters,
Represented by its Proprietor Mr.Nishook Lakshmi Vadivel,
No.16/1, 4th Street,
Anjugam Nagar, Kolathur,
Chennai-600 099. ...Petitioner

Vs.

1. The Commercial Tax Officer,
Surapattu : Avadi : Tiruvallur : Tamil Nadu,
Surapattu Assessment Circle,
Integrated Commercial Taxes Building,
Wall Tax Road,
Chennai-600 003.

2. The Assistant Commissioner (ST) (FAC),
Surapattu Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai-600 003.

3. The Branch Manager,
Oriental Bank of Commerce,
Plot No.1, Senthil Nagar,
First Main Road,
Kolathur,
Chennai-600 099. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in Reference No.ZD330324206790R/2018-19 Dated 30.03.2024 on the file of the 1st respondent and quash the same as contrary to law, consequently direct the 2nd respondent to defreeze the bank account bearing in GSTIN: 33APJPV3246D2ZW/2018-19 dated 05.07.2024 of the petitioner Registered Taxable person.

For Petitioner : Mrs.V.Vijayalakshmi

For Respondents : Mr.V.Mahalingam,
Senior Standing Counsel

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 30.03.2024 passed by the first respondent for the assessment period 2018-2019.

2. Mr.V.Mahalingam, learned Senior Standing Counsel, takes notice on behalf of the respondents.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submitted that there were two proposals, the second respondent issued Show Cause Notice in Form GST

DRC-01 dated 10.03.2022, stating that there is a mismatch of tax liability between GSTR-1 and GSTR 3B; GSTR 2A and GSTR 3B filed by the petitioner for the assessment year 2018-2019, thereby, the first respondent demanded the petitioner for the payment of differential amount in respect of impugned assessment period. In response to the said notice, the petitioner had filed its reply on 04.07.2022 along with necessary documents. Thereafter, one proposal was dropped by the first respondent and based on the other proposal, the present impugned order came to be passed on the ground that the petitioner has not produced the relevant documents pertaining to mismatch of tax liability, without providing an opportunity of personal hearing to the petitioner. The learned counsel contends that, if one opportunity is provided, the petitioner would be able to substantiate its case by filing relevant documents, since the petitioner had received the relevant documents from the petitioner's supplier. Further, the learned counsel for the petitioner submits that the petitioner is ready and willing to pay 10% of the disputed tax in respect of the impugned assessment period.

5. Mr.V.Mahalingam, learned Senior Standing Counsel appearing for the respondents would submit that since the relevant documents with regard to the mismatch of tax liability were not produced by the petitioner at the time of

sending its reply to the show cause notice, the first respondent proceeded to pass the present impugned order. Further, he submitted that subject to the payment of 10% of the disputed tax in respect of the impugned assessment period, this Court can remand the matter to the Authority concerned for passing appropriate orders.

6. Heard the learned counsel for the petitioner as well as the learned Senior Standing counsel for the respondents and perused the materials available on record.

7. Considering the submissions made by learned counsel on either side, and the fact that the present impugned order came to be passed by the first respondent owing to non-furnishing of relevant documents with regard to mismatch of tax liability by the petitioner and that based on the documents furnished already, one proposal was dropped and that subsequent to the reply submitted, the petitioner had also received further documents based on which the other proposal can also not be countenanced, this Court is of the view that, since the petitioner is agreeing to show its bona fide by paying 10% of the disputed tax amount, an opportunity should be afforded to the petitioner to furnish the documents sought to be relied on to the first respondent.

8. For the reasons stated above, this Court is inclined to set-aside the impugned order dated 30.03.2024 passed by the first respondent with the following directions:-

(i) The matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall deposit 10% of the disputed tax in respect of the impugned assessment period to the first 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 order will take effect from the date of payment of the said amount.

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

(iii) On receipt of such additional reply/objection by the petitioner, the first 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.

(iv) Considering the fact that the impugned order itself is set-aside, nothing survives in the attachment order passed by the second respondent dated 05.07.2024, and hence it is ordered to be lifted. Therefore, the third respondent/Bank is directed to de-freeze the petitioner's Bank account immediately upon the production of the copy of this order, in case, the petitioner's Bank account is attached.

9. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

08.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,

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