IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.20333 of 2024
and
W.M.P.Nos.22256 to 22258 of 2024

Balaraman Srinivasan
Proprietor of Sharvesh Silks,
94 E, Madurakaliamman Koil Street,
Shanmuga Nagar, Dadagapatti,
Salem-636 006. ...Petitioner

Vs.

1. The Assistant Commissioner (ST)
Annathanapatty Assessment Circle,
Integrated Commercial Tax Building,
Fourth Floor, Pitchards Road,
Hassthampatty, Salem-636 007.

2. Syndicate Bank,
Rep by its Branch Manager,
7 and 8 Ramalinga Madalayam Street,
Gugai, Salem-636 006. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the files of the 1st Respondent herein in GSTIN/33GHNPS5580K1ZJ/2017-18 dated 21.12.2023 and quash the same.

For Petitioner : M/s.K.Siri Chandana

For Respondent 1 : Mrs.K.Vasanthamala,
Government Advocate (Tax)

ORDER

Challenging the order dated 21.12.2023 passed by the first respondent, the petitioner has filed the present Writ Petition.

2. Mrs.K.Vasanthamala, learned Government Advocate (Tax) takes notice on behalf of the first respondent.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. Alleging that there is mismatch of tax liability between GSTR-3B and GSTR-2A filed by the petitioner for the financial year 2017-2018, the first respondent passed an impugned order dated 21.12.2023, demanding the payment of differencial tax amount along with interest.

5. The learned counsel for the petitioner submitted that the Show Cause Notice dated 26.09.2023 in Form DRC-01 raised on the petitioner in the GST common portal, as the petitioner was unaware of the same, he failed to respond the said Show Cause Notice. Further, he submitted that even an impugned order was uploaded in the GST portal under “Additional notice and

orders column" and the physical version of such order was not served on the petitioner. The petitioner came to know about the impugned proceedings only through the second respondent/Bank, on account of recovery proceedings. Further, he would submit that, if an opportunity is provided, the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

6. The learned Government Advocate appearing for the first respondent would submit that subject to the deposit of 10% of the disputed tax by the petitioner in respect of the impugned assessment period, this Court can consider and pass appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the first respondent and perused the materials available on record.

8. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned show cause notice was uploaded on the GST Portal Tab. According to the

petitioner, the petitioner was not aware of the issuance of the show cause notice issued through the GST Portal and the original of the said show cause notice was not furnished to them. In such circumstances, this Court is of the view that the impugned order came to be passed without affording an opportunity of personal hearing to the petitioner to establish its case, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

9. For the reasons stated above, this Court is inclined to set aside the impugned order dated 21.12.2023 passed by the first respondent, with the following directions:-

(i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax 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 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 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 has been set aside, this Court is of the opinion that the attachment of the petitioner's Bank account cannot survive any longer and hence, it is ordered to be lifted. The second respondent is directed to de-freeze the petitioner's Bank account immediately upon the production of a copy of this order, in case if the petitioner's Bank account is attached.

10. With the above directions, the 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.,
jd

To

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