IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.21448 of 2024
and
W.M.P.No.23411 & 23412 of 2024

Tvl Dhanalakshmi Sarees,
Represented by its Proprietor,
Mr.Emakalnatham Chinnabuddunaidu Srinivasan
No.3, Chinna Bargur IDSMD Building,
Chinna Bargur, Krishnagiri Tamilnadu – 635 104.
...Petitioner

Vs.

Deputy State Tax Officer
Krishnagiri II Circle,
Hosur Division, Tamil Nadu. ...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned Order dated 26.10.2023 in FORM GST DRC -07, bearing GST No.33FMKPS1525K1ZR/2017-18 along with Demand order dated 26.10.2023 having reference No.ZD331023159862J, issued by the respondent and to quash the same as arbitrary.

For Petitioner : Mr.S.Sanskar Samdaria

For Respondent : Mr.V.Prashanth Kiran
Government Advocate (Tax)

Order

Heard Mr.S.Sanskar Samdaria, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Tax) who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order dated 26.10.2023 passed by the respondent and the consequential demand order dated 26.10.2023 and to quash the same.

3. The facts of the case, in short, are as follows:-

i) The petitioner is engaged in the business of supplying Sarees, having place of business in the State of Tamil Nadu and is registered under the provisions of Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017; that for the Financial Year 2017-18, the petitioner filed their returns, which was scrutinized by the respondent by virtue of Section 61 of General Sales Tax Act read with Rule 89 of GST Rules and an intimation in Form GST DRC-01A dated 13.09.2023, was issued for the alleged difference in purchase and sales turnover, consequently, a show cause notice dated 26.09.2023 was issued under Section 74 (5) of GST Act, which culminated in the order dated 26.10.2023 and consequential demand order dated 26.10.2023. Challenging those orders, the present Writ Petition is filed.

4. Mr.Sanskar Samdaria, learned counsel for the petitioner would submit that all the notices/communications, which culminated in the impugned orders were merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, and the petitioner, being a small concern, was not aware of the notices being uploaded in the GST Portal, therefore, they had no occasion to peruse the said notices, and thus, failed to give reply and clarify the difference in the sales and purchase turnover, only when the respondent called the petitioner over phone and intimated about the tax dues as per the order passed during May, 2024 and informed about the existence of demand for tax, interest and penalty, the petitioner came to know about the impugned orders.

4.1 Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and are liable to be set aside, as the petitioner has not been afforded with any opportunity of personal hearing. However, the learned counsel would submit that in the event, this Court is inclined to set aside the impugned orders, the petitioner is agreable to pay 10% of the disputed tax amount, and hence, prayed for appropriate orders.

5. Mr.V.Prashanth Kiran, learned Government Advocate (Tax) for the respondents fairly submitted that if the petitioner is ready and willing to deposit 10% of the disputed tax, then, the prayer sought for by the petitioner may be considered.

6. I have given due considerations to the submissions made on either side and perused the materials available on record.

7. On perusal of records, it is crystal clear that the impugned orders came to be passed against the petitioner, behind their back, as the respondent has not taken any steps to serve any notices/communications, particularly, show cause notice/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, hence, the petitioner, was not aware of any such notices, and only when the respondent contacted the petitioner over phone, and intimated about the tax dues pursuant to the order passed during May, 2024, the petitioner became aware; and the petitioner, being a small concern, obviously, there wouldn't have been any occasion for them to view the GST Portal then and there. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned orders and this is sufficient to hold that the impugned orders are nothing but ex parte orders, which are unsustainable in the eye of law and the notices/communications, which were merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, can no longer be deemed to be a sufficient service.

8. In the light of the above findings, this Court is inclined to set aside the impugned order dated 26.10.2023 and the consequential demand order dated 26.10.2023, as the same suffers from violation of principles of natural justice and any such order came to be passed against an Assessee (petitioner in this case) without providing any opportunity of personal hearing and filing reply is directly hit by Articles 14 and 19 (1) (g) of the Constitution of India.

9. In the result, the Writ Petition is allowed, the impugned order dated 26.10.2023 as well as the consequential demand order dated 26.10.2023 are set aside and the matter is remanded back to the Authority concerned for fresh consideration. While remanding the matter, it is made clear that the impugned orders are set aside subject to the condition that the petitioner deposits 10% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the petitioner shall file a reply within two weeks and after the filing of reply, the respondent is directed to provide personal opportunity of hearing by issuing due notice and after hearing the petitioner in full, shall pass necessary orders in accordance with law. No costs. Consequently, connected Miscellaneous

Petitions, viz., W.M.P.No.23411 of 2024 is ordered and W.M.P.No.23412 of 2024 is closed.

07.08.2024

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Index : yes/no
Neutral Citation : yes/no

To
Deputy State Tax Officer
Krishnagiri II Circle,
Hosur Division, Tamil Nadu.

Krishnan Ramasamy,J.,

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W.P.No.21448 of 2024

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