IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.21631 of 2024
WMP.Nos.23607 and 23608 of 2024

M/s.Kanna Garments, by its Proprietor A.Kannan
Tiruppur 641608 Petitioner

Vs

The State Tax Officer (ST), Bazar Assessment Circle
Tiruppur Respondent

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the order dated 22.12.2023 in DRC-07 in Ref.No.ZD331223171116U passed under Section 73 of the TNGST Act by the Respondent and to quash the same.

For Petitioner : Mr.Varun Pandian M

For Respondents : Mr.G.Nanmaran, Special Government Pleader

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order dated 22.12.2023 in DRC-07 in Ref.No.ZD331223171116U passed under Section 73 of the TNGST Act by the Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner Company is engaged in the business of manufacturing and exporting garments and its GST registration was cancelled on 15.12.2020 and as on today, no business is carried out. The alleged show cause notice dated 29.09.2023, personal hearing notice

dated 20.10.2023 and the impugned assessment order were all published in the GST Online Portal. Hence, contending that since the impugned order was passed, without affording an opportunity of filing a reply to the show cause notice, including an opportunity of personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice, it is not maintainable, this Writ Petition has been filed.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.

4. The learned counsel for the Petitioner would submit that the GST registration of the Petitioner Company was cancelled as early as in the year 2020 and that no business is carried out as on today and that the alleged show cause notice and the personal hearing notice were issued through the GST Online Portal and that the originals of the same were not served physically on the Petitioner and hence, the Petitioner had no occasion to know about the same and consequently, they could not file a reply and also could not appear for personal hearing, but however, the impugned order came to be passed, without affording an opportunity of filing a reply to the impugned show cause notice, including a personal hearing to the Petitioner, thereby violating the principles of natural justice. The learned counsel would further submit that the Petitioner would be able to establish their case if an opportunity is provided and that the Petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

5. The learned Special Government Pleader for the Respondent would submit

that if this Court is inclined to set aside the impugned order, appropriate orders may be passed, by putting the Petitioner on terms.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is seen that admittedly the impugned show cause notice and the personal hearing notice were issued through the GST Online Portal and the originals of the same were not served physically on the Petitioner. Further, the GST registration of the Petitioner Company was also cancelled. It is also stated that no business is carried out as on today. When the Respondent Authority intends to pass an assessment order, it should be done only after affording an opportunity of filing a reply to the show cause notice, including a personal hearing to the Assessee and thereafter, considering the reply of the Assessee, as provided under law, but in this case, the Respondent Authority failed to do so. Further, the Petitioner herein was not in a position to notice about the issuance of show cause notice and the personal hearing notice, since they were issued through the GST Online Portal and the originals of the same were not served physically to the Petitioner. Consequently, the Petitioner was not able to send a reply and also to appear for personal hearing. According to the Petitioner, the Petitioner would be able to establish their case if an opportunity is provided. In such circumstances, this Court is of the view that the impugned order came to be passed, without affording opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice and hence, it is just and

necessary to provide an opportunity to the Petitioner to establish their case, on merits and in accordance with law, however, by putting the Petitioner on terms.

7. For the reasons stated above, the matter is remanded back to the Respondent for consideration afresh, by setting aside the impugned order on condition that the Petitioner shall pay 10% of the disputed tax demand, within a period of four weeks from the date of receipt of a copy of this order. Within two weeks thereafter, the Petitioner is permitted to submit a reply to the impugned show cause notice, by enclosing all relevant documents.

8. Upon receipt of such reply and upon being satisfied that 10% of the disputed tax demand was received, the Respondent is directed to provide a reasonable opportunity of a personal hearing, by issuing a personal hearing notice, giving not less than 14 days time from the date of such notice and consider the reply along with the relevant documents to be submitted by the Petitioner and thereafter, pass fresh orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of the Petitioner's reply.

9. With the above directions and terms, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

12.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
Srcm

To

The State Tax Officer (ST), Bazar Assessment Circle, Tiruppur

KRISHNAN RAMASAMY, J.

Srcm

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