IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.21728 & 25081 of 2024
and
W.M.P.Nos.23700 & 27408 of 2024

T.P.Satheesan,
Proprietor of M/s.Neha Traders,
No.81/17, 8th Street Main Road,
Near Axis Bank,
Poombugar Nagar, Kolathur,
Chennai-600 099.

...Petitioner in both W.P's

Vs.

1. The State Tax Officer,
Perambur Assessment Circle,
15 & 16, Malligai Avenue,
Kolathur, Chennai-600 099.
2. The Deputy State Tax Officer-1,
Perambur Assessment Circle,
15 & 16, Malligai Avenue,
Kolathur, Chennai-600 099.

.... Respondents 1 & 2 in both W.P's

3. The Branch Manager,
HDFC Bank, HDFC Bank Ltd.,
No.2, P.S.Sivasamy Salai,
Mylapore, Chennai-600 004.

... Respondent 3 in W.P.No.21728 of 2024

Prayer in W.P.25081/2024: 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 file of the 2nd respondent impugned order dated 13.12.2023 in File No.GSTIN:33BKDPS7556R1Z9/2017-18 and to quash the same.

Prayer in W.P.21728/2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent's proceeding of GST DRC-13 in File No.GSTIN:33BKDPS7556R1Z9/2017-18/dated 05.06.2024 pursuant to the provisional Attachment order in Form GST DRC-13 issued u/s.79(1)(c) of the TNGST Act, 2017 to the 3rd respondent dated 05.06.2024 attaching my bank account (A/c.No.03231140008001) and to quash the same.

(In both W.P.s')

For Petitioner : Mr.B.Thirumalai

For Respondents 1 & 2 : Mr.V.Prashanth Kiran
Government Advocate (Taxes)

COMMON ORDER

Since the issue involved and the relief sought in both the Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Taxes), takes notice on behalf of the respondents 1 & 2.

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 would submit that the notices in Form DRC 01A dated 31.07.2023, Form DRC 01 dated 21.08.2023 raised on the petitioner through GST portal, as the petitioner was unaware of the said notices, he failed to respond the said show cause notices, which led to the passing of the impugned order dated 13.12.2023, without any reply from the petitioner. Further, he submitted that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner. The petitioner came to know about the impugned order from the third respondent/Bank on account of the recovery proceedings inititated against the petitioner for non-filing of GST returns.

4.1. He further submits 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 in respect of the impugned assessment period.

5. Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) appearing for the respondents 1 & 2 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 remand the matter to the Authority concerned for passing appropriate orders.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) for the respondents 1 & 2 and perused the materials available on record.

7. 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 notices were uploaded on the GST Portal Tab. According to the petitioner, the petitioner was not aware of the issuance of the show cause notices issued through the GST Portal and the original of the said show cause notices were not furnished to them. In such circumstances, this Court is of the view that the impugned order came to be passed without affording any 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.

8. For the reasons stated above, this Court is inclined to set aside the impugned orders dated 13.12.2023 passed by the second respondent and the consequential Provisional Attachment order dated 05.06.2024 passed by the first respondent. Accordingly, this Court passes the following orders:-

(i) The orders impugned herein are set aside on condition that the petitioner deposits 10% of the disputed tax amount in respect of the assessment year in question within a period of four weeks from the date of receipt of a copy of this order.

(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 issue a 14 days clear notice by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

(iv) Considering the fact that the impugned orders itself has been set aside, this Court is of the opinion that the attachment made on the Bank account of the petitioner cannot survive any longer and hence, it is lifted. The third respondent/Bank is directed to defreeze the Bank account of the petitioner immediately upon the production of a copy of this order, in case the petitioner's Bank account is attached.

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

04.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd

To
1. The State Tax Officer,
Perambur Assessment Circle,
15 & 16, Malligai Avenue,
Kolathur, Chennai-600 099.
2. The Deputy State Tax Officer-1,
Perambur Assessment Circle,
15 & 16, Malligai Avenue,
Kolathur, Chennai-600 099.
3. The Branch Manager,
HDFC Bank, HDFC Bank Ltd.,
No.2, P.S.Sivasamy Salai,
Mylapore, Chennai-600 004.

Krishnan Ramasamy,J.,
jd

W.P.Nos.21728 & 25081 of 2024

04.09.2024