IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.21533 of 2024
and
W.M.P.No.23501 of 2024

Tvl.H.K.Agro Foods,
Represented by its proprietor Mr.Vinod Kumar
10, Aliyurmuthaia Street, Kondithope,
Chennai, Tamil Nadu 600 079. ...Petitioner

Vs.

The State Tax Officer,
Vallalarnagar Assessment Circle,
Integrated Commerical Taxes Offices Building,
Chennai (North) Division,
No.32, Elephant Gate Bridge Road,
Chennai 600 003. ... Respondent

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 Respondent herein, in GSTIN 33ACGPV1307H1ZT/2017-18 dated 28.12.2023 along with FORM GST DRC-07 in Ref. No:ZD3312232361801 dated 28.12.2023 and quash the same.

For Petitioner : Mr.C.Bosco

For Respondent : Mr.G.Nanmaran
Special Government Pleader (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 28.12.2023 passed by the respondent.

2. The respondent passed an impugned order dated 28.12.2023, demanding the payment of differential amount in respect of the impugned assessment period, on the ground that the petitioner availed excessive claim of Input Tax Credit (ITC) for the financial year 2017-2018.

3. The learned counsel for the petitioner submitted that, a show cause notice in Form GST DRC-01 dated 24.08.2023 was raised on the petitioner in the GST portal under the head "Additional Notices and Orders". On receipt of such show cause notice dated 24.08.2023, the petitioner filed a reply on 16.09.2023 and also filed one more reply in Form GST DRC-06 on 22.12.2023. The main contention of the learned counsel for the petitioner is that the present impugned order came to be passed by the respondent on 28.12.2023, stating that as if no reply was filed by the petitioner for the said show cause notice and arrived at a finding that the petitioner is liable to pay a sum of Rs.69,77,798/-, and demanded the petitioner to make a payment of the aforesaid amount. Pursuant to which, the petitioner has paid the entire amount and has also filed a detailed reply. However, the respondent has not at all considered all those aspects and passed the present impugned order, which is non-est in the eye of law.

Hence, he sought for setting aside the impugned order and to direct the respondent to provide an opportunity to the petitioner to present the case and participate in the proceedings before the respondent.

4. Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondent would submit that after adjusting the amount said to have been paid by the petitioner, the respondent arrived at Rs.1,47,989/- payable by the petitioner. In this regard, he has also placed on record the communication letter, dated 02.09.2024 received from the respondent/State Tax Officer.

5. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader (Taxes) for the respondent and perused the materials available on record.

6. Considering the above submissions made by the learned counsel on either side and upon perusal of the communication received from the respondent/State Tax Officer dated 02.09.2024 and the reply filed by the petitioner dated 16.09.2023, it is made clear that the impugned order dated 28.12.2023 came to be passed without considering the reply filed by the petitioner, resulting in violation of principles of natural justice. In such view of the matter, this Court is inclined to set aside the impugned order dated 28.12.2023 passed by the respondent. Accordinly, while setting

aside the impugned order dated 28.12.2023, this Court passes the following orders:

(i) The order impugned herein is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The respondent is directed to consider the replies dated 16.09.2023 and 22.12.2023 filed by the petitioner by issuing a 14 days clear notice fixing the date for personal hearing to the petitioner including the copy of a letter dated 02.09.2024 and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

7. With the aforesaid directions, this Writ Petition is allowed. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.

02.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The State Tax Officer,
Vallalarnagar Assessment Circle,
Integrated Commerical Taxes Offices Building,
Chennai (North) Division,
No.32, Elephant Gate Bridge Road, Chennai 600 003.

Krishnan Ramasamy,J.,

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