IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.20668 of 2024
and W.M.P.Nos.22603 and 22604 of 2024

M/s.Exacto Technology,
Represented by its Partner P J Renga Krishnan,
295, MM Sons Compound, Uppilipalayam Main Road,
Sowripalayam, Coimbatore - 641 028. ... Petitioner

Vs.

1. The Assistant Commissioner of GST & Central Excise,
   Coimbatore II Division,
   1441, Elgi Building, Trichy Road,
   Coimbatore - 641 018.

2. The Assistant Commissioner of GST & Central Excise,
   Coonoor Division,
   No.65, Brook Land Main Road,
   Lord Hobart Road, Quill Hill,
   Coonoor - 643 101. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in original bearing OIO.No.44/2022 ST (AC) dated 21.09.2022 issued by the second respondent and quash the same.

For Petitioner : Mr.C.Derrick Sam

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in original bearing OIO.No.44/2022 ST (AC) dated 21.09.2022 issued by the second respondent and quash the same.

2. The learned counsel for the petitioner submits that the petitioner was having an office @ 28, Indra Nehru Street, Ganapathy, Coimbatore - 641 006 and subsequently was shifted to 295, MM & Sons Campus, Uppilipalayam Main Road, Sowripalayam, Coimbatore - 641 028. In this regard, the respondent had also issued Form GST REG-06 on 02.08.2018 that is also placed before this Court.

3. On the other hand, the first respondent issued a show cause notice dated 21.10.2021 to the old address even though the new address was available in the Income Tax Return, which was relied in the show cause notice. Adjudication was shifted to the second respondent at Coonoor. All the

communications were sent to the old address and the same were returned to the sender. Thereafter, the assessment order was also passed on 21.09.2022 by the second respondent. Both the show cause notice as well as the assessment order were issued to the old address of the petitioner, viz., @ 28, Indra Nehru Street, Ganapathy, Coimbatore - 641 006. Since the show cause notice, all personal hearing notices and the impugned order were sent by the respondents to the old address, the petitioner had no knowledge about the service of notices. Further, the first respondent sent only a recovery notice to the new address on 29.12.2023. Therefore, the impugned order passed by the second respondent is violation of principles of natural justice and hence, the same is liable to be set aside.

4. After perusing the Form GST REG-06 issued on 02.08.2018, the learned Senior Standing Counsel for the respondents would submit that the show cause notice, the assessment order and other communication were sent to the address mentioned therein, which is the old address, and the same were not sent to the address mentioned in the said GST Form. Therefore, an appropriate order may be passed.

5. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the materials on record.

6. In the present case, there is no dispute on the fact, but, the show cause notice and the assessment order were sent to the old address instead of new address and thereafter, the recovery notice alone was sent to the new address. Under this circumstance, without any reply by the petitioner and without providing an opportunity of personal hearing to the petitioner, the show cause notice dated 21.10.2021 and the assessment order dated 21.09.2022 were issued/ passed, which is in clear violation of principles of natural justice. Hence, the impugned order dated 21.09.2022 passed by the respondent is liable to be set aside. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside.

(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 of 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.

With the above directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

19.08.2024

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To

1. The Assistant Commissioner of GST & Central Excise,
   Coimbatore II Division,
   1441, Elgi Building, Trichy Road,
   Coimbatore - 641 018.

2. The Assistant Commissioner of GST & Central Excise,
   Coonoor Division,
   No.65, Brook Land Main Road,
   Lord Hobart Road, Quill Hill,
   Coonoor - 643 101.

KRISHNAN RAMASAMY, J.

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