IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.20387 of 2024
and
W.M.P.Nos.22313 & 22314 of 2024

Tvl. EJJ Constructions,
Represented by its Partner,
Mrs.Suraparaju Murali Jhansi,
W/o.Mr.Suraparaju Murali,
No.1, Raghavendra Street,
Yeshothambal Nagar,
Thenpalani Nagar Extension, Kolathur,
Chennai, Tiruvallur,
Tamil Nadu-600 099. ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
Office of the Deputy State Tax Officer-II,
Villivakkam Assessment Circle,
North-III, Chennai North,
No.15 & 16, Malligai Avenue Kolathur,
Chennai-600 099. ... 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 in order u/s.73 of the TNGST Act, 2017 in Ref No.ZD3312232520150 dated 28.12.2023 along with Annexure dated 28.12.2023 and the Summary of the Order dated 28.12.2023 on the file of the Respondent for the period July, 2017 to March 2018 and quash the same.

For Petitioner : Mr.I.Dinesh

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

ORDER

By consent, the main Writ Petition is taken up for disposal at the admission stage itself.

2. The challenge in this Writ Petition is to the order dated 28.12.2023 passed by the respondent for the financial year 2017-2018 and the Summary of the Order dated 28.12.2023 for the period July, 2017 to March 2018 and to quash the same.

3. The learned counsel for the petitioner submitted that pursuant to the issuance of the show cause notice in Form GST DRC-01 along with the summary notice dated 14.08.2023 by the respondent, the petitioner filed its reply in Form GST DRC 06 dated 21.12.2023, however, the respondent without considering the submissions made by the petitioner in their reply, passed the

impugned order. Therefore, the learned counsel prayed for setting aside the impugned order, since the same is in violation the principles of natural justice, as the petitioner has not afforded with any opportunity to putforth their contentions before passing the impugned proceedings.

4. Mr.V.Prashanth Kiran, learned Government Advocate (T) who takes notice on behalf of the respondent justified the order passed by the respondent by stating that the respondent, even at the time of issuance of show cause notice sought for certain documents from the petitioner, however, the petitioner, at the time of filing reply, failed to produce such relevant documents, therefore, the respondent provided further time to the petitioner to furnish the relevant documents, viz., Audited Balance Sheet with Schedules and Notes, Annual report filed under Income Tax Act, Form 3CD filed under Income Tax Act and Cash Flow Statement etc; that despite the granting such opportunities, since the petitioner failed to produce relevant documents, as sought for by the respondent, the petitioner's reply was rejected, the impugned order came to be passed, and therefore, contended that impugned order need not be interfered with.

5. In reply, the learned counsel for the petitioner submitted that, if one more opportunity is provided, the petitioner would be able to substantiate his case and also the petitioner also agrees to make a payment of 10% of the disputed tax in respect of the impugned assessment period.

6. The learned Government Advocate appearing for the respondent raised strong objection for granting any such relief as sought for by the petitioner, by stating that sufficient opportunities were granted to produce certain documents, and, it is the petitioner, who failed to utilize those opportunities, therefore, insisted this Court to dismiss the Writ Petition.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for respondent and perused the materials available on record.

8. On perusal of records, it is seen that the petitioner has been filing its returns under the TNVAT Act, that after the introduction of GST Act, the petitioner migrated from TNVAT to GST Act and obtained GST registration w.e.f 01.07.2017, and has been filing its monthly GSTR-3B returns promptly;

that for the FY 2017-18, the returns filed by the petitioner was selected for scrutiny and notice in Form ASMT-10 dated 14.07.2023 was issued, however, since the said notice was not served on the petitioner through physical mode but only uploaded in the GST Portal, via. "View Additional Notices" , the petitioner was not aware of such notice; that, again notice in FORM ASMT-10 dated 30.08.2023 was issued, wherein, very same returns filed by the petitioner was selected for scrutiny and an order under Section 73 was passed; that challenging the said order, the petitioner filed Appeal before the Appellate Authority, however, in the interregnum, the respondent has issued another show cause notice in FORM GST DRC-01 along with Summary Notice dated 14.08.2023, and proceeded to pass the impugned order, dated 28.12.2023, though the petitioner has an alternate remedy of filing Appeal, as they did earlier, however, since the time limit to file Appeal has elapsed, the petitioner is before this Court by way of present Writ Petition challenging the order dated 28.12.2023.

9. Thus, bearing in mind, the aforesaid background of the case, this Court is inclined to consider the request made by the petitioner for the reason that in the present case, though the petitioner had filed a reply dated 21.12.2023 to the Show Cause Notice, unfortunately, at the time of filing reply to the show

cause notice, the petitioner was not in a position to produce some documents, which were sought to be relied on by the respondent. However, considering the fact that the petitioner to show their bona fide is ready and willing to pay 10% of the disputed tax amount and prays for one more opportunity for production of documents and to putforth their case before the respondent, coupled with the further fact that the petitioner failed to utilize the efficacious remedy of filing Appeal, as the time limit prescribed under the Statute for filing Appeal got lapsed, this Court is inclined to set aside the impugned order.

9.1. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall deposit 10% of the disputed tax in respect of the impugned period to the respondent within a period of four weeks from the date of receipt of a copy of this order; and the setting aside of the impugned orders shall take effect from the date of payment of the said amount.

(ii) The petitioner shall file their reply/objection along with the required documents, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and pass appropriate orders on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner, as expeditiously as possible.

10. In the result, this Writ Petition is allowed on the aforesaid terms. No costs. Consequently, the connected miscellaneous petitions are closed.

08.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The Deputy Commercial Tax Officer,
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Villivakkam Assessment Circle,
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No.15 & 16, Malligai Avenue Kolathur,
Chennai-600 099.

Krishnan Ramasamy,J.,
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