IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.21451 of 2024
and
W.M.P.Nos.23414 & 23415 of 2024

Tvl. K.S.Granite,
Represented by its Partner,
Mr.Doraiswamyreddy Loganathan,
No.32/1A, 2A, Kondappanayanapalli,
Achamangalam, Krishnagiri,
Tamilnadu – 635 104. ...Petitioner

Vs.

1. The Assistant Commissioner (ST)
Krishnagiri II Circle, Hosur Division,
Tamil Nadu.

2. The Manager, Bank of India,
C.R.S.Plaza 185/24, Bangalore Road. ...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned Order dated 31.10.2023, in Form GST – DRC 07 bearing GST No.33AA0FK5727A1ZJ/2017-18 issued by the first respondent along with its consequential demand order dated 01.11.2023, having Ref.No.ZD331123006439S and to quash the same.

For Petitioner : Mr.S.Sanskar Samdaria

For Respondent-1 : Mr.V.Prashanth Kiran
Government Advocate (Tax)

Order

Heard Mr.S.Sanskar Samdaria, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Tax) who takes notice on behalf of the first respondent. Considering the nature of relief to be granted herein, notice to the second respondent is dispensed with. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order dated 31.10.2023 passed by the first respondent and the consequential demand order dated 01.11.2023 and to quash the same.

3. The facts of the case, in short, are as follows:-

i) The petitioner is a Partnership Firm, running a business in the name and style, Tvl. K.S.Granite for several years; that during the Financial Year 2017-18, the petitioner claimed an Input Tax Credit, which was scrutinized by the first respondent by virtue of Section 61 of General Sales Tax Act read with Rule 89 of GST Rules and issued an intimation in Form GST DRC-01A dated 22.09.2023, for difference in GSTR-3B and GSTR-2A, consequently, a show cause notice dated 29.09.2023 was issued, which culminated in the orders dated 31.10.2023 and 01.11.2023. Challenging those orders dated 31.10.2023 and 01.11.2023, the present Writ Petitions are filed.

4. Mr.S.Sanskar Samdaria, learned counsel for the petitioner would submit that all the notices/communications, which culminated in the impugned orders were merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, and the petitioner, being a small concern, was not aware of the notices being uploaded in the GST Portal, therefore, they had no occasion to peruse the said notices, and thus, failed to give reply and clarify the difference in GSTR-3B and GSTR-2A, only when the respondent called the petitioner over phone and intimated about the tax dues as per the order passed during June, 2024 and when the petitioner received a letter regarding attachment of their bank account, the petitioner came to know about the impugned orders.

4.1 Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and are liable to be set aside, as the petitioner has not been afforded with any opportunity of personal hearing. However, the learned counsel would submit that in the event, this Court is inclined to set aside the impugned orders, the petitioner is agreable to pay 10% of the disputed tax amount, for which sake, the bank attachment has to be lifted, and hence, prayed for appropriate orders.

5. Mr.V.Prashanth Kiran, learned Government Advocate (Tax) for the first respondent fairly submitted that if the petitioner is ready and willing to deposit 10% of the disputed tax, then, the prayer sought for by the petitioner may be considered.

6. I have given due considerations to the submissions made on either side and perused the materials available on record.

7. On perusal of records, it is crystal clear that the impugned orders came to be passed against the petitioner, behind their back, as the respondent-Department has not taken any steps to serve any notices/communications, particularly, show cause notice/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, hence, the petitioner, was not aware of any such notices, and only when the respondent contacted the petitioner over phone, and intimated about the tax dues pursuant to the order passed during June, 2024, the petitioner became aware; and the petitioner, being a small concern, obviously, there wouldn't have been any occasion for them to view the GST Portal then and there. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned orders and this is sufficient to hold that the impugned orders are nothing but ex parte orders, which are unsustainable in the eye of law and the notices/communications, which were merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, can no longer be deemed to be a sufficient service.

8. In the light of the above findings, this Court is inclined to set aside the impugned order dated 31.10.2023 and the consequential demand order dated 01.11.2023, as the same suffers from violation of principles of natural justice and any such order came to be passed against an Assessee (petitioner in this case) without providing any opportunity of personal hearing and filing reply is directly hit by Articles 14 and 19 (1) (g) of the Constitution of India.

9. Accordingly, the Writ Petition is allowed, the impugned order dated 31.10.2023 as well as the consequential demand order dated 01.11.2023 are set aside and the matter is remanded back to the first respondent for fresh consideration. While remanding the matter, it is made clear that the impugned orders are set aside subject to the condition that the petitioner deposits 10% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the petitioner shall file a reply within two weeks and after the filing of reply, the respondent is directed to provide personal opportunity of hearing by issuing due notice and after hearing the petitioner in full, shall pass necessary orders in accordance with law.

10. Intervening at this stage, the learned counsel for the petitioner would submit that the petitioner would give a letter to the Bank towards transfer of amount to an extent of 10% of the disputed tax to the respondent-Department, hence, sought for a direction on the Bank to go by the letter of the petitioner. In view of the said submission, this Court directs that once the petitioner's gives a letter to the Bank, viz., second respondent herein for transfer of 10% amount towards disputed tax into the account of the respondent-Department, the order for freezing the petitioner's bank account passed by the first respondent dated 26.06.2024 is ordered to be revoked.

11. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions, viz., W.M.P.No.23414 of 2024 is ordered and W.M.P.No.23415 of 2024 is closed.

07.08.2024

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Index : yes/no
Neutral Citation : yes/no

To
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Tamil Nadu.

2. The Manager, Bank of India,
C.R.S.Plaza 185/24, Bangalore Road.

Krishnan Ramasamy,J.,

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