IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2024

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

**W.P.No.21595 of 2024**
**& W.M.P.Nos.23568 & 23569 of 2024**

RHENUS LOGISTICS INDIA PRIVATE LIMITED,
Rep by its Assistant General Manager,
Mr.Akshay Chapaneri,
5, Srinivas Towers,
Cenotaph Road,
Chennai 600 018.

... Petitioner

**Vs.**

1.State of Tamil Nadu,
Rep by its Principal Secretary to Government and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

2.The Assistant Commissioner (ST),
Saidapet Assessment Circle,
5th Floor, No.1, PAPJM Buildings,
Greams Road, Chennai 600 006.

... Respondents

**Prayer:**

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call upon the records pertaining to the order No.ZD330424259335G dated 30.04.2024 on the file of the 2nd respondent and to quash the same.

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|---|---|---|
| For Petitioner | : | Mr.J.V.Niranjan, |
| For Respondent | : | Mr.G.Nanmaran,<br>Special Government Pleader |

**ORDER**

This writ petition has been filed challenging the impugned order dated 30.04.2024 passed by the 2nd respondent.

2. Mr.G.Nanmaran, learned Special Government Pleader, takes notice on behalf of the respondents in petition. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in the

present case, the show cause notice was issued by the respondents on 26.12.2023, whereby it has been stated that the personal hearing was scheduled to be held on 30.04.2024. Subsequently, the petitioner had filed two replies on 12.01.2024 and 30.04.2024. Thereafter, the impugned order dated 30.04.2024 came to be passed by the 2nd respondent.

4. He would also contend that while passing the impugned order, the respondents had not at all considered the 2nd reply filed by the petitioner dated 30.04.2024. That apart, though the 1st reply dated 12.01.2024 was extracted in the impugned order, the respondent has not passed any speaking order while rejecting the said reply. Hence, he would submit that the said impugned order has been passed by the respondent in non-application of mind and the same is liable to be set aside. Further, he would fairly submit that the petitioner is willing to deposit 10% of the disputed tax amount. Hence, he requests this Court to pass appropriate order.

5. In reply, the learned Special Government Pleader for the

respondent would submit that in the impugned order, the reply was extracted and based on the said reply, some of the demands were also dropped by the respondent. Therefore, he would contend that it is not that the respondent has not at all considered the reply filed by the petitioner. However, he fairly admit that in some of the issues, the respondent had rejected the reply filed by the petitioner vide one line order and hence, he requests this Court to pass appropriate orders.

6. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and also perused the entire materials available on record.

7. In the present case, upon perusal of documents, it appears that the petitioner had filed 2 replies dated 12.01.2024 and 30.04.2024, for the show cause notice issued by the respondent on 26.12.2023. However, while passing the impugned order, the respondent had failed to consider the 2nd reply dated 30.04.2024 and only the 1st reply dated 12.01.2024 was extracted in the impugned order, that too, while dealing with some issues, the respondents had rejected the reply filed by the petitioner by

stating that they need further clarification.

8. Normally, if the Department needs any further clarification, they are supposed to have fixed a date for personal hearing and no final assessment order should be passed without such clarification. However, in the present case, though the personal hearing was fixed on 30.04.2024, without clarifying the issues with the Assessee/petitioner, the respondent had passed the final assessment order on the same day in non-application of mind stating that they need further clarification. In such view of the matter, it is clear that the reply filed by the petitioner was not properly considered by the 2nd respondent while passing the impugned order.

9. For the reasons stated above, this Court is of the view that the impugned order was passed in violation of principles of natural justice since it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 30.04.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 30.04.2024 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of disputed tax amount to the respondent within a period of six weeks from today (27.08.2024) and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The respondent is directed to consider both the replies dated 12.01.2024 and 30.04.2024 filed by the petitioner 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, within a period of 6 weeks from the date of aforesaid payment by the petitioner.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

**27.08.2024**

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

To

1.The Principal Secretary to Government and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

2.The Assistant Commissioner (ST),
Saidapet Assessment Circle,
5th Floor, No.1, PAPJM Buildings,
Greams Road, Chennai 600 006.

**KRISHNAN RAMASAMY.J.,**

nsa

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