IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.21509 of 2024 &
W.M.P.No.23477 of 2024

M/s.Thirukumaran Developers,
Rep. by its Partner Mr.Kumar.S.,
GSTIN:33AAIFT6983D1ZY,
41, Kovilpathagai Main Road,
Kovilpathagai,
Avadi, Chennai,
Tamil Nadu- 600 062. ... Petitioner

Vs.

The Deputy State Tax Officer-II,
Thirumullaivoyal Assessment Circle,
Integrated Commercial Taxes Building,
Chennai North Division,
No.32, Elephant Gate Bridge Road,
(Wall Tax Road),
Vepery, Chennai - 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in the file of the impugned Order No.33AAIFT6983D1ZY/2017-18, dated 28.12.2023 and its summary served electronically in Common Portal Vide FORM DRC-07 No.ZD3312232331218, dated 28.12.2023 and to quash the same with consequential relief to direct the respondent to unfreez the petitioner's bank account No.75010200000188 (bank of Baroda).

For Petitioner : M/s.S.Akila

For Respondent : M/s.Amirta Poonkodi Dinakaran
Government Advocate (Taxes)

ORDER

M/s.Amirta Poonkodi Dinakaran, learned Government Advocate (Taxes) takes notice for the respondent.

2.By consent, the writ petition is taken up for final disposal at the admission stage itself.

3.Challenging the order dated 28.12.2023 passed by the respondent and also seeking a direction to the respondent to unfreeze the petitioner's bank account, the present writ petition has been filed before this court.

4. The learned counsel for the petitioner submits that the partners of the firm decided to wind up their business and they accordingly applied for cancellation of their GST Registration, which was approved with effect from 31.10.2023. Despite this, the respondent issued an AMT-10 notice on 04.07.2023, with an annexure dated 03.07.2023, for the Financial Year 2017-2018, demanding payment for discrepancies between the turnover reported

in the GST Returns and Form 26AS. Subsequently, a show cause notice in Form DRC-01 was issued on 08.09.2023, in which reference was made to the annexure dated 03.07.2023. The learned counsel would further submit that the petitioner was unaware of the show cause notice and the confirmation of the demand as the same were uploaded only in the GST portal and not served by any other means and that, the petitioner came to aware of the proceedings only when the respondent raised attachment on the petitioner's bank account as part of the recovery proceedings. Thus, according to the learned counsel, the impugned order was passed without providing any opportunity to the petitioner to submit its oral and written submissions and hence, the same is violative of the principles of natural justice. However, the learned counsel submitted that the petitioner is now ready and willing to pay 10% of the demand made by the respondent in the event of providing an opportunity to them to file their reply/objections along with the required documents to substantiate their claim

5. On the other hand, the learned Government Advocate (Taxes) would submit that the respondent uploaded the notice for personal hearing in the GST Online Portal. But, the petitioner failed to avail the said opportunity. Yet, the learned counsel has no objection for granting relief to the petitioner, subject to certain terms.

6. Having regard to the admitted fact that the impugned order came to be passed without hearing the petitioner in violation of the principles of natural justice, and also considering the submissions made by the learned counsel on either side, 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 pay a 10% of demand 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 order will take effect from the date of payment of the said amount.

(ii) On such payment, the respondent is directed to lift the attachment on the bank accounts of the petitioner with immediate effect.

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

(iv) On filing of such reply/objection by the petitioner, the respondent shall consider the same after issuing a 14 days clear notice by fixing the date of personal hearing and thereafter pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

7. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.

12.08.2024

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

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To

The Deputy State Tax Officer-II,
Thirumullaivoyal Assessment Circle,
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KRISHNAN RAMASAMY.J.,

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