IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.21253 of 2024
and
W.M.P.Nos.23209 & 23212 of 2024

Mr.Rajkumar,
Proprietor,
Tvl.J.R.V.Ventures,
412, 8th Cross MGR Street,
Saraswathi Nagar, Thirumullaivoyal,
Tiruvallur 600 062.

... Petitioner

Vs.

Deputy Commercial Tax Officer,
Thirumullaivoyal Assessment Circle,
Integrated Commercial Taxes Office Complex,
D.No.32, Room No.114,
Elephant Gate Bridge Road,
Chennai 600 003.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order bearing Ref.No.ZD331223075720Q dated 12.12.2023 passed by the respondent and quash the same.

For Petitioner : Mr.T.R.Ramesh

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order dated 12.12.2023 passed by the respondent.

2. Mr.V.Prashanth Kiran, learned Government Advocate, takes notice on behalf of the respondent. 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 the petitioner used to receive advance and supply the products. Under these circumstances, the GST came into force with effect from 01.07.2017 and hence, the petitioner discharged their GST on the supplies made by them from 01.07.2017 for the financial year April 2017 to March 2018. At this juncture, the show cause notice was issued by the respondent stating that

there was a difference between the tax supplies reported in Form GSTR 3B as against the Form 26AS for the period of July 2017 to March 2018. Pursuant to the said notice, the petitioner has filed a reply stating that the aforesaid difference has occurred since the turnover reported in Form 26AS includes the turn over for the period April 2017 to June 2017, which was prior to the introduction of GST. Thereafter, an opportunity of personal hearing was granted by the respondent, however, since the Accountant of the petitioner had resigned from services, the petitioner was not in a position to appear before the respondent for personal hearing. Thereafter, without even considering the reply filed by the petitioner, the impugned order came to be passed by the respondents. Hence, he requests this Court to set aside the impugned order and grant one more opportunity to the petitioner to establish his case before the respondent.

4. In reply, the learned Government Advocate appearing for the respondent would submit that though the respondent had granted an

opportunity of personal hearing, the petitioner has failed to avail the said opportunity. Hence, he would submit that in the event of setting aside of the impugned order, this Court may direct the petitioner to pay 10% of the demand amount and requests this Court to pass appropriate orders.

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

6. In the present case, a notice was issued by the respondent based on the difference between the turn over reported in Form 26AS and Form GSTR 3B, for which the petitioner filed a reply stating that the said difference has occurred since the Form 26AS includes the turn over of three months, viz., April 2017 to June 2017, which is prior to the commencement of GST Regime, whereas, the turnover reported in Form GSTR3B will not include the said period. However, the said aspect was not considered by the respondent while passing the impugned order. Therefore, this Court believes that if one more opportunity is granted, the petitioner can establish his case before the Authorities concerned. In such

view of the matter, this Court is inclined to set aside the impugned order dated 12.12.2023. Accordingly, this Court passes the following order:-

(i) The impugned order dated 12.12.2023 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of demand amount to the respondent within a period of four weeks from today (12.08.2024) and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(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.

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

12.08.2024

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

To

Deputy Commercial Tax Officer,
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Integrated Commercial Taxes Office Complex,
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Elephant Gate Bridge Road,
Chennai 600 003.

KRISHNAN RAMASAMY.J.,

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