IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.21547 of 2024
and
W.M.P.No.23513 of 2024

Jayam Gas Agency,
Rep., by Proprietor,
Mr. Ramasamy Senthilkumar,
No.354, Abbas Garden Road,
Subbanna Gounderthottam
Lunanagar Edayarpalayam,
Coimbatore 641 025.

...Petitioner

Vs.

The Deputy State Tax Officer-1,
Velandipalayam Circle,
Commercial Taxes Buildings,
New Annexure Building, 1st Floor,
Dr.Balasundaram Road,
Coimbatore-18. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Order bearing Reference Number ZD331223148627G dated 20.12.2023 and the consequential Impugned Recovery Notice bearing Reference Number 33DRAPS8307A1Z4/A1 dated 04.04.2024 passed by Deputy State Tax Officer-1 the respondent herein, to quash the same and consequently direct the respondent to refund the tax recovered from the petitioner arising out of the impugned Order.

For Petitioner : Mr.G.Shiva Kumar

For Respondent : Mrs.K.Vasanthamala,
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 20.12.2023 and the consequential impugned recovery notice dated 04.04.2024 passed by the respondent.

2. Alleging that the petitioner had wrongly availed the Input Tax Credit (ITC) for the financial year 2017-2018, the respondent passed an impugned order dated 20.12.2023, demanding the payment of differential amount along with interest and penalty in respect of the impugned assessment period.

3. The learned counsel for the petitioner submitted that, a show cause notice in Form GST DRC-01 dated 26.09.2023 raised on the petitioner in the GST portal under the head “Other Notices” tab, as the petitioner was unaware of the same, he failed to respond the said show cause notice, which led to the passing of the present impugned order. Further, he submitted that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner.

It is also submitted that the major amount of the tax demand has also been recovered by the respondent from the Electronic Cash Ledger of the petitioner. Hence, he sought for appropriate orders from this Court for affording an opportunity to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings.

4. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) for the respondent and perused the materials available on record.

5. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned show cause notice was uploaded on the GST Portal Tab. According to the petitioner, the petitioner was unaware of the issuance of the said show cause notice issued through the GST Portal and the original of the said show cause notice was not furnished to them. In such circumstances, this Court is of the view that the impugned order came to be passed without affording any opportunity of personal hearing to the petitioner to establish its case, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

6. For the reasons stated above, this Court is inclined to set aside the impugned order dated 20.12.2023 along with consequential impugned notice dated 04.04.2024 passed by the respondent with the following directions:-

(i) The orders impugned herein are set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks from the date of receipt of a copy of this order.

(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 for 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. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.

02.09.2024

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

Krishnan Ramasamy,J.,
jd

To
The Deputy State Tax Officer-1,
Velandipalayam Circle,
Commercial Taxes Buildings,
New Annexure Building, 1st Floor,
Dr.Balasundaram Road,
Coimbatore-18.

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