IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.21614 of 2024
WMP.Nos.23591 and 23592 of 2024

M/s.Patel and Co., by its Proprietrix
Coimbatore 641001 Petitioner

Vs

The State Tax Officer, Coimbatore-I
Coimbatore Respondent

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the order dated 27.12.2023 in Ref.No.ZD331223226671A along with a summary order in DRC07 for the financial year 2017-18 and to quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondents : Mrs.K.Vasanthamala, Government Advocate

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order dated 27.12.2023 in Ref.No.ZD331223226671A along with a summary order in DRC07 for the financial year 2017-18 and to quash the same.

2. The case of the Petitioner is that the Petitioner Company is a Dealer in house hold articles and an Assessee on the file of the Respondent. The Respondent issued a show cause notice, dated 08.11.2023, proposing to levy tax with interest and penalty for the discrepancies in the turn over.

Thereafter, the impugned assessment order dated 27.12.2023 came to be published through the GST Portal Tab "View Additional Notices and Orders", demanding tax with penalty and interest on the ground that the Petitioner did not respond to the show cause notice. Contending that the impugned order was passed without affording an opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice, this Writ Petition has been filed.

3. This Court heard the learned counsel on either side and also perused the materials placed on record.

4. The learned counsel for the Petitioner would submit that the Petitioner was not aware of the impugned order since the original of the same was not served physically on them and that the impugned order came to be published through the GST Portal Tab "View Additional Notices and Orders", without affording opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner, thereby violating the principles of natural justice and hence, the impugned order is not sustainable. The learned counsel would further submit that the Petitioner would be able to establish their case if an opportunity is provided and that the Petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

5. The learned Additional Government Pleader for the Respondent would submit that since the Petitioner did not respond to the show cause notice, the

impugned order came to be passed and hence, the Petitioner cannot complain of the breach of principles of natural justice and that if this Court is inclined to set aside the impugned order, appropriate orders may be passed, by putting the Petitioner on terms.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is evident that the impugned order was published through the GST Portal Tab "View Additional Notices and Orders" and the Petitioner was not aware of the same, since it was not served physically on the Petitioner. When an Assessing Officer intends to pass an assessment order and raise a demand against an Assessee, it should be done only after affording an opportunity of filing a reply to the show cause notice, including a personal hearing to the Assessee and thereafter, considering the reply of the Assessee, as provided under law, but in this case, the Respondent Authority failed to do so. According to the Petitioner, the Petitioner would be able to establish their case if an opportunity is provided. In such circumstances, this Court is of the view that the impugned order came to be passed without affording opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice and hence, it is just and necessary to provide an opportunity to the Petitioner to establish their case on merits and in accordance with law.

7. For the reasons stated above, the matter is remanded back to the Respondent for consideration afresh, by setting aside the impugned order on

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condition that the Petitioner shall pay 10% of the disputed tax demand, within a period of four weeks from the date of receipt of a copy of this order. Within two weeks thereafter, the Petitioner is permitted to submit a reply to the impugned show cause notice, by enclosing all relevant documents. Upon receipt of such reply and upon being satisfied that 10% of the disputed tax demand was received, the Respondent is directed to provide an opportunity of personal hearing, by issuing personal hearing notice giving not less than 14 days time from the date of such notice and consider the reply along with the relevant documents to be submitted by the Petitioner and thereafter, pass fresh orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of the Petitioner's reply.

8. With the above directions and terms, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

12.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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To

The State Tax Officer, Coimbatore-I
Coimbatore

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