IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.21681 of 2024
and
W.M.P.Nos.23654 & 23655 of 2024

G.R.Aquarium
Represented by its Proprietor, Bhakthavatsalam Parthasaarathy,
CP-23, Razack Garden Main Road,
Arumbakkam,
Chennai-600 106. ...Petitioner

Vs.

The Commercial Tax Officer,
Vadapalani, Central-1,
Chennai. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, call for the records of the respondent in the impugned order in GSTIN: 33ALBPP8039L1ZT dated 08.12.2023 along with consequential order from GST DRC-07 vide with Ref No.ZD330424092060U dated 12.04.2024 for the tax period April 2018 to March 2019 and quash the same.

For Petitioner : Mr.J.Chandran Sundar Sashikumar
For Respondent : Mr.V.Prashanth Kiran
Government Advocate (Tax)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 12.04.2024 passed by the respondent for the Assessment Year 2018-2019.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Tax), 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. Alleging that there is a mismatch of tax liability between GSTR-3B and GSTR-2A filed by the petitioner for the financial year 2018-2019, the respondent passed an impugned order dated 12.04.2024, demanding the payment of differential amount in respect of the impugned assessment period.

4. The learned counsel for the petitioner submitted that Show Cause Notice in Form DRC-01A raised on the petitioner in the GST common portal, as the petitioner was unable to file their reply for the reason that the Chartered Accountant, who had an access to portal as well who knows the password, failed to bring them about the show cause notice issued by the department.

Further, he would submit that even the impugned order dated 12.04.2024 was also uploaded on the GST portal and the physical version of such order was not served on the petitioner. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax in respect of the impugned assessment period.

5. Mr.V.Prashanth Kiran, learned Government Advocate (Tax) appearing for the respondent would submit that subject to the deposit of 10% of the disputed tax by the petitioner in respect of the impugned assessment period, this Court can remand the matter to the Authority concerned for passing appropriate orders.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent and perused the materials available on record.

7. 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 not aware of the issuance of the 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.

8. For the reasons stated above, this Court is inclined to set aside the impugned order dated 12.04.2024 passed by the respondent. Accordingly, 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 10% of the disputed tax amount in respect of impugned assessment period within a period of four weeks 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 pass appropriate orders on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner, as expeditiously as possible.

9. Accordingly, the Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

12.08.2024

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

To
The Commercial Tax Officer,
Vadapalani, Central-1,
Chennai.

Krishnan Ramasamy,J.,

jd

W.P.No.21681 of 2024

12.08.2024