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WP.No.21660 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.21660 of 2024
WMP.Nos.23636 and 23637 of 2024

T.Nagaraj

Petitioner

Vs

The State Tax Officer, Udhaigai South Circle
Uthagamandalam, Nilgiris

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 18.11.2023 in GSTIN:33AHKPN8419P1ZN/2017-18 passed by the Respondent and to quash the same and to direct the Respondent to pass orders afresh, after affording the pt an opportunity of hearing.

For Petitioner : Mr.J.Bharathiraja

For Respondents : Mr.T.N.C.Kaushik, Additional Government Pleader

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order dated 18.11.2023 in GSTIN: 33AHKPN8419P1ZN/2017-18 passed by the Respondent and to quash the same and to direct the Respondent to pass orders afresh, after affording the pt an opportunity of hearing.
2. The case of the Petitioner is that the Petitioner is carrying on the business of distribution of sweets and an Assessee on the file of the Respondent. The



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Respondent issued a show cause notice, dated 22.09.2023 calling for explanation for the discrepancies in the returns through the GST Online Portal. Thereafter, the impugned order came to be passed through the GST Online Portal, demanding tax with penalty and interest on the ground that the Petitioner did not send a reply to the show cause notice and also did not appear in person. Hence, contending that since 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, it is not sustainable, this Writ Petition has been filed.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.
4. The learned counsel for the Petitioner would submit that the impugned show cause notice was issued through the GST Online Portal and that the original of the same was not served physically on the Petitioner and hence, the Petitioner had no occasion to know about the issuance of the show cause notice and consequently, they could not file a reply and also could not appear for personal hearing, but however, the impugned order came to be passed, without affording an opportunity of filing a reply to the impugned show cause notice, including a personal hearing to the Petitioner, thereby violating the principles of natural justice. 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



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10% of the disputed tax demand in respect of the impugned assessment period.

5. The learned Additional Government Pleader for the Respondents would submit 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 seen that admittedly the impugned show cause notice was issued through the GST Online Portal and the original of the same was not served physically on the Petitioner. When an Respondent Authority intends to pass an assessment order and raises a demand against the 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. Further, the Petitioner herein was not in a position to notice about the issuance of show cause notice, since it was issued through the GST Online Portal and the original of the same was not served physically to the Petitioner. Consequently, the Petitioner was not able to send a reply and also to appear for personal hearing. 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



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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, however, by putting the Petitioner on terms.

7. For the reasons stated above, the matter is remanded back to the Respondent for consideration afresh, by setting aside the impugned order on 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 a reasonable opportunity of a personal hearing, by issuing a 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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KRISHNAN RAMASAMY, J.

Srcm

To

The State Tax Officer, Udhagai South Circle
Uthagamandalam, Nilgiris

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