IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.21587 and 21589 of 2024
WMP.Nos.23555, 23557, 23559 and 23560 of 2024

M/s.Kalki Gift N Variety by its Proprietor
Prajapati Dilipkumar, Chennai-79 Petitioner-Both WPs

Vs

The State Tax Officer, NSC Bose Assessment Circle
Chennai-3 Respondent-Both WPs

Prayer:- These Writ Petitions are filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the orders dated 19.02.2024 in Ref.No.ZD330224108616Q along with a detailed order dated 19.02.2024 in GSTIN:33AAHPD9047K1ZM/2018-19 assessment year 2018-19 and dated 21.02.2024 in Ref.No.ZD330224121454X along with a detailed order dated 21.02.2024 in GSTIN:33AAHPD9047K1ZM/2020-21 for the assessment year 2020-21 passed by the Respondent and to quash the same.

For Petitioner : Mr.N.Chandrasekar

For Respondents : Mr.C.Harsha Raj, Additional Government Pleader

ORDER

1. These Writ Petitions are filed for issuance of Writ of Certiorari to call for the records relating to the orders dated 19.02.2024 in Ref.No. ZD330224108616Q along with a detailed order dated 19.02.2024 in GSTIN:33AAHPD9047K1ZM/2018-19 for the assessment year 2018-19 and dated 21.02.2024 in Ref.No.ZD330224121454X along with a detailed order

dated 21.02.2024 in GSTIN:33AAHPD9047K1ZM/2020-21 for the assessment year 2020-21 passed by the Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner Company is a Proprietorship Firm and an Assessee on the file of the Respondent. The Respondent issued show cause notices, dated 08.12.2023 in respect of the assessment years 2018-19 and 2020-21. Thereafter, the impugned orders dated 19.02.2024 and 21.02.2024 in respect of the said assessment years came to be published through the GST Portal Tab "View Additional Notices and Orders" on the ground that the Petitioner did not send a reply to the show cause notices and also did not appear in person. Hence, contending that since the impugned orders were 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 orders were published through the GST Portal Tab "View Additional Notices and Orders" and that the originals of the same were not served physically on the Petitioner and that the impugned orders 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 10% of the disputed tax demand in respect of each of the impugned assessment periods.

5. The learned Additional Government Pleader for the Respondents would submit that 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 orders were published through the GST Portal Tab "View Additional Notices and Orders" and the originals of the same were not served physically on the Petitioner. When the Respondent Authority intends to pass an assessment order 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. In such view of the matter, 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 orders on condition that the Petitioner shall pay 10% of the disputed tax demand, in respect of each of the assessment years, 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 notices, by enclosing all relevant documents. Upon receipt of such reply and upon being satisfied that 10% of the disputed tax demand was received in respect of each of the assessment years, the Respondent is directed to issue a notice of personal hearing, 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 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, these Writ Petitions are 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
Srcm

KRISHNAN RAMASAMY, J.

Srcm

To

The State Tax Officer, NSC Bose Assessment Circle
Chennai-3

WP.No.21587 and 21589 of 2024

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