IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.21590 of 2024
WMP.Nos.23562 and 23663 of 2024

M/s.Evergreen Fair Trade Private Limited
represented by its Director, Selvakumar
Chennai-94 Petitioner

Vs

The State Tax Officer (ST),
MMDA Colony Assessment Circle,
Chennai Central, Chennai-6 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 22.03.2024 in GSTIN:33AACCE8372L1ZD/2018-19 along with a order dated 22.03.2024 in DRC-07 in Ref.No.ZD3303241458298 and to quash the same.

For Petitioner : Mr.Jayalakshmi P

For Respondents : Mr.C.Harsha Raj, 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 22.03.2024 in GSTIN: 33AACCE8372L1ZD/2018-19 along with a order dated 22.03.2024 in DRC-07 in Ref.No.ZD3303241458298 and to quash the same.
2. The case of the Petitioner is that the Petitioner Company is engaged in the business of TMT bars trading. The Respondent issued a show cause notice

dated 04.01.2024 in DRC-01 and thereafter, the impugned assessment order dated in DRC-07, dated 22.03.2024 came to be passed, 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 show cause notice same since the original of the same was not served physically on them. The learned counsel would further submit that the Petitioner paid the entire tax liability and 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, 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.

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.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is evident that the Petitioner was not aware of the issuance of the show cause notice, since it was not served physically on the Petitioner and hence, the Petitioner could not file a reply in time. 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 impugned order is set aside and the matter is remanded back to the Respondent for consideration afresh. The Petitioner is permitted to submit a reply, by enclosing all relevant documents within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of such reply, the Respondent is directed to provide a reasonable opportunity to the Petitioner, including a personal hearing, by

KRISHNAN RAMASAMY, J.

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issuing a personal hearing notice giving not less than 14 days time from the date of such notice and consider the reply 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, 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 (ST), MMDA Colony Assessment Circle, Chennai Central, Chennai-6