IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.20927 & 20930 of 2024 &
W.M.P.Nos.22863, 22864, 22867 & 22868 of 2024

W.P.No.20927 of 2024

Tvl.Sri Angala Parameshwari,
GSTIN: 33ALBPS6343Q1ZL,
Represented by its Proprietor V.Selvaraj,
16, Pumping Station Road,
4th Cross, Karungalpalayam,
Erode - 638 003. ... Petitioner

Vs.

The Assistant Commissioner (State Tax),
Park Road Assessment Circle,
Commercial Tax Buildings,
No.1, Brough Road,
Erode - 638 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Form GST DRC - 07 bearing reference number ZD330324136546J/2018-19 dated 21.03.2024 issued by the respondent and quash the same.

W.P.No.20930 of 2024

Tvl.Aishwarya Traders,
GSTIN: 33AVAPV9587G1Z0,
Represented by its Proprietor S.Venkatesh,
51, Meenakshisundaranar Road,
Thiru Nagar Colony,
Erode - 638 003. ... Petitioner

Vs.

The State Tax Officer,
Park Road Assessment Circle,
Commercial Tax Buildings,
No.1, Brough Road,
Erode - 638 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Form GST DRC - 07 bearing reference number ZD330424124029R/2018-19 dated 16.04.2024 issued by the respondent and quash the same.

For Petitioner [in both W.Ps] : Mr.G.Derrick Sam

For Respondent [in both W.Ps] : Mr.G.Nanmaran Special Government Pleader (Taxes)

COMMON ORDER

These Writ Petitions have been filed by the petitioners to quash the impugned orders dated 21.03.2024 and 16.04.2024 passed by the respondents respectively.

2. Mr.G.Nanmaran, learned Special Government Pleader (Taxes) takes notice on behalf of the respondents.

3. By consent of the parties, the main Writ Petitions are taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioners would submit that the petitioners had received the show cause notices and thereafter, they filed replies before the authorities concerned. He would further submit that as per Section 75(4) of the GST Act, 2017, the respondents were supposed to provide personal hearing of the petitioners. However, without providing any opportunity to the petitioners, the respondents passed the impugned orders, demanding the payment of GST for a sum of Rs.40,93,318/- and Rs.38,36,412/- for the assessment year 2018-19 respectively, which are in violation of the principles of natural justice.

5. On the other hand, the learned Special Government Pleader (Taxes) would submit that the show cause notices were issued on the petitioners and they had filed replies and after considering their replies, the respondents had passed the impugned orders. He would further submit that in the event this Court is inclined to set aside the orders, the same may be considered subject to the payment of 15% of the disputed tax.

6. In reply, the learned counsel for the petitioners would fairly submit that the petitioners are now ready and willing to pay 10% of the demand (Rs.40,93,318/- and Rs.38,36,412/- respectively) made by the respondents in the event of providing an opportunity of personal hearing to substantiate their claim, for which, the learned Special Government Pleader (Taxes) has no serious objection.

7. Heard the learned counsel for the petitioner and the learned Special Government Pleader (Taxes) for the respondent and also perused the materials available on record.

8. In the present case, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned orders. Hence, this Court is of the view that the impugned orders were passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned orders dated 21.03.2024 and 16.04.2024 passed by the respondents respectively. Accordingly, this Court passes the following order:-

(i) The orders impugned herein are set aside and the matters are remanded to the respondents for fresh consideration on condition that the petitioners shall pay a sum of Rs.40,93,318/- and Rs.38,36,412/- respectively (10% of demand) to the respondents within a period of four weeks from the date of receipt of a copy of this order and the setting aside of the impugned orders will take effect from the date of payment of the said amount.

(ii) The petitioners 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 issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

9. Accordingly, the Writ Petitions are disposed of. There is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

09.08.2024

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

sri

KRISHNAN RAMASAMY.J.,
sri

To

1.The Assistant Commissioner (State Tax),
Park Road Assessment Circle,
Commercial Tax Buildings,
No.1, Brough Road,
Erode - 638 001.

2.The State Tax Officer,
Park Road Assessment Circle,
Commercial Tax Buildings,
No.1, Brough Road,
Erode - 638 001.

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