IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.21869 of 2024
and
W.M.P.Nos.23866 & 23868 of 2024

A.Banumathy,
Prop: PV Industries,
No.4/17, SIDCO Industrial Estate,
Ambattur, Chennai-600 098. ...Petitioner

Vs.

The Assistant Commissioner (ST)
Padi Assessment Circle,
417, Integrated Building for CT,
Nandanam, Chennai-600 035. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the respondent relating to the impugned order dated 02.02.2024 proceedings in GSTIN: 33ATXPB0049G1ZU/2018-19 along with consequential order in DRC-07 with Ref No.ZD3302240133714 dated 03.02.2024 and quash the same.

For Petitioner : Mr.P.James Victor Rajkumar

For Respondent : Mr.G.Nanmaran
Special Government Pleader (Tax)

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorari to call for the records of the respondent relating to the impugned order dated 02.02.2024 along with consequential order in DRC-07 dated 03.02.2024 and quash the same.

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

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. Alleging that there are discrepancies in monthly returns between GSTR-3B and GSTR-1 filed by the petitioner for the financial year 2018-2019, the respondent passed an impugned order dated 02.02.2024, demanding the payment of difference of tax amount along with interest.

5. The learned counsel for the petitioner submitted that Show Cause Notice dated 11.04.2022 in Form DRC-01 raised on the petitioner in the GST common portal, after a lapse of three years from the relevant financial year, as

the petitioner was unaware of the same, he failed to respond the said Show Cause Notice. Even an impugned order was uploaded in the GST portal under “Additional notice column” and the physical version of such order was not served on the petitioner. It is also submitted that the difference between GSTR 1 and GSTR 3B is purely a clerical error committed by the petitioner; however, the reason so adduced by the petitioner was not considered by the respondent solely on the ground that the petitioner had not replied within the stipulated time, whereas, according to the petitioner, the accountant, who ought to have filed the reply, left his job and hence, the reply could not be filed within the time. Hence, the learned counsel prayed to direct the respondent to grant one more opportunity to substantiate its claim and the petitioner also agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

6. The learned Special Government Pleader 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 consider and pass appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned

Special Government Pleader for the respondent and perused the materials available on record.

8. 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.

9. For the reasons stated above, this Court is inclined to set aside the impugned order dated 02.02.2024 passed by the respondent. Accordingly, this Court passes the following orders:-

(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 a 10% of the disputed tax to the respondent within a period of four weeks from the date of receipt of a copy of this order; 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.

10. With the above directions, 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

Krishnan Ramasamy,J.,
jd

To
The Assistant Commissioner (ST)
Padi Assessment Circle,
417, Integrated Building for CT,
Nandanam, Chennai-600 035.

W.P.No.21869 of 2024

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