IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.22426 of 2024 &
W.M.P.Nos.24423 & 24425 of 2024

M/.Tyche Vimpex Private Limited,
Rep. by its Director Mrs.D.Karpagam,
No.7, Rosy Tower, Mahatma Gandhi Road,
Nungambakkam, Chennai,
Tamil Nadu - 600 034. ... Petitioner

Vs.

The Assistant Commissioner of GST and
Central Excise,
Office of the Deputy / Assistant Commissioner
of GST and Central Excise, Triplicane Division,
No.26/1, 6th Floor (Annex Building),
Utthamar Gandhi Road,
Nungambakkam,Chennai - 34. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in Order-in-Original No.02/2024-25 GST (AC), dated 09.04.2024 on the file of the respondent and quash the same as illegal, error on the face of record and contrary to the provisions of the Goods and Service Tax 2017 and consequentially direct the respondent to pass as per the law by providing an opportunity of personal hearing.

For Petitioner : Dr.A.Thiyagarajan
Senior Counsel

For Mr.S.Ramesh Kumar

For Respondent : Ms.Revathi Manivannan
Senior Standing Counsel

ORDER

This writ petition has been filed to quash the order-in-original dated 09.04.2024 passed by respondent and for a direction to the respondent to provide an opportunity of personal hearing to the petitioner.

2. The petitioner is the wife of Arun Kumar, the deceased Managing Director of the petitioner company, who passed away in December 2021 due to COVID-19. Following his demise, the petitioner company suspended its activities from December 2021. On 22.12.2023, the respondent issued a show cause notice alleging that the petitioner had claimed excess ITC in GSTR-3B compared to the ITC available in GSTR-2A for the period from April 2018 to March 2019. In response, the petitioner requested an additional month to file objections and a reply to the show cause notice due to the ongoing impact of her husband's death on the company. Despite this request, the respondent issued the order hastily without providing adequate opportunity for a response. Hence, this writ petition.

3. The learned senior counsel for the petitioner submits that in the reply dated 07.02.2024, the petitioner specifically requested additional time to file the required documents, citing the death of the Managing Director and the subsequent suspension of company activities. Due to the demise of the Managing Director, the petitioner was unable to file returns for two years, which also affected her ability to produce the necessary documents immediately. He would further submit that the petitioner was unaware of the proceedings due to lack of access to notices on the GST portal. Hence, the learned counsel seeks one more opportunity to file the necessary objections and documents.

4. On the other hand, the learned Senior Standing Counsel (Taxes) would submit that the respondent uploaded the notice for personal hearing in the GST Online Portal. He would also submit that the personal hearing was granted to the petitioner on 12.02.2024, 27.02.2024 and 07.03.2024 by sending a letter, however, the petitioner failed to avail the said opportunity. Hence, he prayed for appropriate orders.

5. In reply, the learned senior counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 10% of the disputed tax in the event of providing an opportunity to them to file their

reply/objections along with the required documents to substantiate their claim, for which, the learned Senior Standing Counsel (Taxes) has no serious objection.

6. Heard the parties and perused the materials placed on record.

7. Considering the submissions from both parties, it is noted that the Managing Director, who handled all GST-related matters, passed away in December 2021, and the company subsequently became inactive. The petitioner was unable to view the notices as they were posted under the "View any other notices" section. After the notice was affixed on 08.01.2024, the petitioner sought additional one month time 07.02.2024 to gather the required documents due to the Managing Director's death, as she need to get some particulars by engaging some Sales Tax Practitioners.

8. Considering the genuine nature of the reason, the admitted fact that the impugned order was issued without providing the petitioner an opportunity to be heard, thereby violating the principles of natural justice, and taking into account the submissions made by counsel on both sides, this Court passes the following order:

(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 after issuing a 14 days clear notice by fixing the date of personal hearing and thereafter pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

9. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

13.08.2024

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

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To

The Assistant Commissioner of GST and
Central Excise,
Office of the Deputy / Assistant Commissioner
of GST and Central Excise, Triplicane Division,
No.26/1, 6th Floor (Annex Building),
Utthamar Gandhi Road,
Nungambakkam,Chennai - 34.

KRISHNAN RAMASAMY.J.,

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