IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.21715 of 2024
and
W.M.P.Nos.23692 & 23693 of 2024

M/s.Peak Automobiles India Private Ltd.,
Rep. by its Managing Director - M.Nivetthini,
100/1, VeerappampalayamPrivu,
Thindal, Erode-638 009. ...Petitioner

Vs.

1. The State Tax Officer (ST),
Office of Commercial Tax Officer,
Inspection, Group VI,
Erode.

2. The Assistant Commissioner of GST & Central Excise,
Erode-I Division, No.81, Bharathi Nagar,
Soolai, Erode-638 001. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, call for the records of the 1st Respondent in GSTIN: 33AAECP8953A1ZK dated 09.03.2024 along with consequential order in Form GST DRC-07 bearing a Ref.No.ZD330324046914H dated 09.03.2024 for the tax period April, 2018 to March 2019 and quash the same.

For Petitioner : M/s.R.Hemalatha
For Respondent 1 : Mr.V.Prashanth Kiran, Government Advocate (Tax)
For Respondent 2 : Mr.Rajnish Pathiyil Senior Panel Counsel

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 09.03.2024 passed by the first respondent along with consequential Form GST DRC-07 for the Assessment Year 2018-2019.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Tax), takes notice on behalf of the first respondent; Mr.Rajnish Pathiyil, learned Senior Panel Counsel, takes notice on behalf of the second respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner submitted that, the second respondent issued Show Cause Notice on 26.10.2023, whereby, the petitioner was directed to show cause as to why the action should not be initiated under Section 73 of the CGST Act for alleged wrong availment of ITC for the

assessment year 2018-2019. In the meantime, the first respondent had inspected the place of business of the petitioner on 17.11.2023 and consequently issued intimation notice in Form DRC-01A dated 15.12.2023 and DRC-01 dated 22.12.2023 raised on the petitioner in the GST common portal, as the petitioner was unable to file their reply for the reason that the Chartered Accountant, who had an access to portal as well who knows the password, failed to bring them about the show cause notice issued by the department. Further, he would submit that even the impugned order dated 09.03.2024 was also uploaded on the GST portal and the physical version of such order was not served on the petitioner. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax in respect of the impugned assessment period.

4. Mr.V.Prashanth Kiran, learned Government Advocate (Tax) appearing for the first 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 remand the matter to the Authority concerned for passing appropriate orders.

5. Heard the learned counsel for the petitioner, the learned Government Advocate as well as the learned Senior Panel Counsel for the respondent and perused the materials available on record.

6. 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.

7. For the reasons stated above, this Court is inclined to set aside the impugned order dated 09.03.2024 passed by the first respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax in respect of impugned assessment period within a period of four weeks 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 first 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.

8. Accordingly, 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
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To

1. The State Tax Officer (ST),
Office of Commercial Tax Officer,
Inspection, Group VI,
Erode.
2. The Assistant Commissioner of GST & Central Excise,
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Krishnan Ramasamy,J.,
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