IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.22187 of 2024
and
W.M.P.Nos.24157 & 24160 of 2024

Eben Industries,
Rep by its Proprietor,
Rajasingh Selvaraj,
34/199 D, Bharathiyar Road, Maniakarampalayam,
Coimbatore- 641 006. ...Petitioner

Vs.

1. The Principal Commissioner GST,
Office of the Principal Commissioner,
Central GST Commissionerate,
Coimbatore.

2. The Assistant Commissioner (ST),
Saravanampatti (West) Circle,
Coimbatore.

3. The State Tax Officer,
Saravanampatti (West) Circle,
Coimbatore.

4. The Deputy State Tax Officer/GST Inspector,
Saravanampatti (West) Circle,
Coimbatore. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Demand Order dated 19.09.2023 made in ZD330923113550R under Section 73 of CGST/TNGST Act, 2017, for Tax period 2019-2020, made by the 3rd Respondent and quash the same and consequently direct the Respondents to release the attachment by de-freezing the petitioner's bank account number 32302078626.

For Petitioner : Mr.R.Nandhakumar

For Respondents : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

ORDER

Challenging the order dated 19.09.2023 passed by the third respondent, the petitioner has filed the present Writ Petition.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Tax) takes notice on behalf of the respondents.

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

4. Alleging that there is mismatch of ITC between GSTR-2A and

GSTR-3B filed by the petitioner for the financial year 2019-2020, the third respondent passed the impugned order dated 19.09.2023, demanding the payment of differential tax amount along with interest.

5. The learned counsel for the petitioner submitted that Show Cause Notice dated 17.08.2022 in Form DRC-01 raised on the petitioner in the GST common portal, as the petitioner was unaware of the same, he failed to respond the said Show Cause Notice. He would further submit that even an impugned order was uploaded in the GST portal under “Additional notices column” and the physical version of such order was not served on the petitioner. The petitioner came to know about the impugned proceedings through the petitioner's Banker by way of freezing the Bank account of the petitioner-company, by virtue of notice dated 12.07.2024 issued by the fourth respondent. It is also submitted that, if an opportunity is provided, and the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

6. The learned Additional Government Pleader appearing for the respondents 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 Additional Government Pleader for the respondents 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 an 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 19.09.2023 passed by the third respondent, with the following directions:-

(i) The order impugned herein is set aside and the matter is remanded to the third respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax 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 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 third 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.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment of the petitioner's Bank account cannot survive any longer and hence, it is ordered to be lifted. The third respondent is directed to de-freeze the petitioner's Bank account immediately upon the production of a copy of this order, in case if the petitioner's Bank account is attached.

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
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Krishnan Ramasamy,J.,

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