IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.23004 of 2024 and
W.M.P.Nos.25087 & 25089 of 2024

Tvl. Kay Kay EM AR Enterprises,
Rep. by its Proprietor Kalarani Murugesan,
6/50, Maracoir Labbai Street,
Mannady, Chennai 600 001. ...Petitioner

Vs.

The State Tax Officer (ST),
Muthialpet Assessment Circle,
Integrated Commercial Taxes Offices Building,
Room No.317, 3rd Floor,
Elephant Gate Bridge Road, Vepery,
Chennai-600 003. ... 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 in and connected with impugned order Reference No.ZD3309231618001 dated 23.09.2023 in Form GST DRC-07 and its consequential summary order No.GSTIN.33AKGPK9048L1ZS/2020-21 dated 23.09.2023 and quash the same as being contrary to law and statutory mandates.

For Petitioner : M/s.Q.Rubina
for Mr.Prakash Goklaney

For Respondent : Mr.J.N.C.Kaushik
Additional Government Pleader (Tax)

ORDER

This Writ Petition has been filed by the petitioner challenging the order dated 23.09.2023 passed by the respondent for the Assessment Year 2020-2021.

2. Mr.J.N.C.Kaushik, learned Additional 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 is a mismatch of tax liability filed by the petitioner for the financial year 2020-2021, the respondent passed an impugned order, dated 23.09.2023, demanding the payment of the differential amount in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that the show cause notice in Form GST DRC-01 dated 07.08.2023 raised on the petitioner in the GST common portal under the head "View additional notices and orders tab", 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 notices issued by the department. Further, he would submit that even the impugned order dated 23.09.2023 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 demand in respect of the impugned assessment period.

6. Mr.J.N.C.Kaushik, learned Additional Government Pleader (Tax) 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 Additional 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 23.09.2023 passed by the respondent with the following directions:-

(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 in respect of the impugned assessment year 2020-2021 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 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.

10. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

14.08.2024

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

Krishnan Ramasamy,J.,
jd

To
The State Tax Officer (ST),
Muthialpet Assessment Circle,
Integrated Commercial Taxes Offices Building,
Room No.317, 3rd Floor,
Elephant Gate Bridge Road, Vepery,
Chennai-600 003.

W.P.No.23004 of 2024

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