IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.22722 of 2024
and
W.M.P.No.24750 of 2024

Tvl.Shrithar Agency,
Rep. by its Proprietor Venkatachalam Narayanan Thara,
No.21, Long Bazaar, Vellore, Tamilnadu – 632 004. ... Petitioner

Vs.

1. The Assistant Commissioner (ST), [FAC],
   Vellore [South] Assessment Circle,
   Government CT Building, Fort Round,
   Bharathiyar Salai, Vellore, Tamil Nadu – 632 001.

2. The Joint Commissioner [CT], Vellore,
   Commercial Taxes Department,
   Government CT Building, Fort Round,
   Bharathiyar Salai, Vellore, Tamil Nadu – 632 001. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records of the first respondent and to quash the impugned pre consultative notice issued in Form DRC 01A bearing Ref no. ZD330123076135T dated 23-01-2023 and the impugned show cause notice issues in Form GST DRC 01 bearing Ref No. ZD330523110536S dated 23-05-2023 thereby setting aside the resultant impugned order bearing Reference No. ZD3304241152123 dated 15.04.2024 demanding GST Cess of Rs.1,08,39,836/- and tax of Rs.26,730/- (CGST-13 365 SGST-13 365) along with appropriate interest and penalty being without jurisdiction by failing to comply with the mandatory procedure prescribed under the provisions of the Act and the Rules and without deliberating to the ITC reflected in the GSTR 2A and availed in GSTR 9, the impugned Order being passed in violation of principles of natural justice, the entire proceedings being excessive and without authority or law.

For Petitioner : Mr.S.Jaikumar

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

\- - - - -

ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorari, to quash the impugned pre consultative notice issued in Form DRC 01A bearing Ref no. ZD330123076135T dated 23-01-2023 and the impugned show cause notice issues in Form GST DRC 01 bearing Ref No. ZD330523110536S dated 23-05-2023 thereby setting aside the resultant impugned order bearing Reference No. ZD3304241152123 dated 15.04.2024 demanding GST Cess of Rs.1,08,39,836/- and tax of Rs.26,730/- (CGST-13 365 SGST-13 365) along with appropriate interest and penalty being without jurisdiction by failing to comply with the mandatory procedure prescribed under the provisions of the Act and the Rules

2. The learned counsel for the petitioner submits that the first respondent issued a pre consultative notice in form GST DRC 01A dated 23.01.0.2023, show cause notice in Form Gst DRC 1 dated 2305.2023 through the common portal which the petitioner was unaware and the petitioner has not filed any reply in response to the same. The first respondent without affording an opportunity of personal hearing has passed the impugned Order.

3. The learned counsel for the petitioner further submits that the respondent has failed to serve the copy of the notice and fix date and time for personal hearing. As sufficient opportunity has not been given, the Order passed by the first respondent is illegal and liable to be set aside. The learned Counsel further submits that already 10% of the disputed tax amount has been paid by the petitioner.

4. The learned Additional Government Pleader for the respondents submits that though the notices were uploaded by the respondent in the GST web portal, the petitioner had failed to appear before the respondent for

personal hearing and has also not filed a reply to the notices issued. However, he fairly submits that if any order is passed by this Court, the same will be complied with by the respondent.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials placed before this Court.

6. Considering the fact that the impugned order was passed without affording an opportunity to the petitioner to establish his case before the authorities concerned, which is clear violation of principles of natural justice and the petitioner has already paid 10% of the disputed tax amount, this Court is of the view that no order can be passed without providing sufficient opportunity to the petitioner. Hence, the impugned order is liable to be set aside.

7. Accordingly, the impugned order passed by the respondent dated 15.04.2024 is set aside and the matter is remanded back to the respondent for fresh consideration. While setting aside the impugned Order, this Court passes the following Order :

[i] the petitioner is directed to file his reply within a period of two (2) weeks. from the date of receipt of a copy of this order.

[ii] on receipt of the reply filed by the petitioner, the respondent shall fix a date for personal hearing by sending a physical notice to the petitioner providing 14 days time and thereafter, pass orders on merits and in accordance with law.

8. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

09.09.2024

vrc

Index : Yes/No

Neutral Citation : Yes/No

To

1. The Assistant Commissioner (ST), [FAC],
   Vellore [South] Assessment Circle,
   Government CT Building, Fort Round,
   Bharathiyar Salai, Vellore, Tamil Nadu – 632 001.

2. The Joint Commissioner [CT], Vellore,
   Commercial Taxes Department,
   Government CT Building, Fort Round,
   Bharathiyar Salai, Vellore, Tamil Nadu – 632 001.

KRISHNAN RAMASAMY, J.

vrc

W.P.No.22722 of 2024 and
W.M.P.No.24750 of 2024

09.09.2024