IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.23142 of 2024
and W.M.P.Nos.25452 and 25274 of 2024

Tvl. Sri Narayana Metal Industries,
Rep. by its Partner C.Rameswaran,
New No.3, Old No.2, Amar Singh Lala Lane,
Park Town, Chennai - 3. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Park Town Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai - 3. ... Respondent

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 in the files of the respondent in GSTIN : 33AEBFS2971R1ZH/2021-22, dated 26.02.2024 and quash the same.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.T.N.C.Koushik
Additional Government Pleader (T)

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorari, to call for the records in the files of the respondent in GSTIN : 33AEBFS2971R1ZH/2021-22, dated 26.02.2024 and quash the same.

2. The learned counsel for the petitioner submits that the respondent issued notice dated 22.12.2022 alleged that the petitioner availed excess ITC in compassion with GSTR-1, GSTR-5 and GSTR-6. The notice was served only through web portal and hence, the petitioner had no knowledge about the same to file their objections. The respondent passed the impugned order without providing sufficient opportunity to the petitioner. In the impugned order, the respondent alleged that there is mismatch in GSTR 3B & GSTR 2A returns. If that being the case then the respondent ought to have conducted proper inquiry because the petitioner is not responsible for the supplier GSTR 1 returns. The part time Accountant failed to see the notice and hence, the petitioner was unable to file a written reply. The respondent had not made any attempt to serve the copy of the notice or personal hearing in any of the mode narrated in Section 169(1)(a)(b)(c) of the GST Act. Therefore, the impugned order is liable to be set aside.

3. The learned Additional Government Pleader for the respondent

would submit that though the show cause notice and personal hearing notice were uploaded by the respondent in the web portal, the petitioner had failed to appear before the respondent for personal hearing. However, he would fairly submit that if any order is passed by this Court, the same will be complied with by the respondent.

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

5. In the present case, it appears that the notices have been uploaded in the web portal and the same were not at all physically served to the petitioner, due to which, the petitioner was unaware about the said notice. Hence, the reasons provided by the petitioner for being unaware of the notice, which was uploaded in the web portal, are appears to be genuine.

6. Further, this Court is of the view that no order can be passed without providing sufficient opportunities to the petitioner. However, in the present case, no reply was filed by the petitioner and no opportunity of personal hearing was provided to the petitioner. Hence, the impugned order is liable to be set aside.

7. Accordingly, the impugned order dated 26.02.2024 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent on condition that the petitioner shall deposit 10% of the disputed tax demand, within a period of four (4) weeks from the date of receipt of a copy of this order and thereafter, the petitioner is directed to file a reply within a period of two (2) weeks. After receipt of the reply, the authorities concerned 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.

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

09.08.2024

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To

The Assistant Commissioner (ST),
Park Town Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai - 3.

KRISHNAN RAMASAMY, J.

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