IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.22431 of 2024
and W.M.P Nos.24428 and 24429 of 2024

Tvl.Sajina,
Proprietor of Masha Mills
201, S.F.No.304-06,
C.P.S.Avenue,
Vadakkupalayam, Uthukuli Road,
Padiyur Taluk, Tiruppur,
Tamil Nadu – 638701 ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Office of the Deputy State Tax Officer-1,
Tiruppur Zone-III
Kangeyam Assessment Circle
No.260-261, Tiruppur Main Road,
Kangeyam-638 701 ... 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 pertaining to the impugned order levying tax u/s 73 of TNGST Act, 2017 in Reference No.ZD330124162191Y dated 31.01.2024 along with Summary of the Order dated 31.01.2024 on the file of the respondent relating to the F.Y.2018-19 and quash the same.

For Petitioner : Mr.I.Dinesh

For Respondent : Mrs.K.Vasanthamala
Government Advocate (Tax)

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order levying tax u/s 73 of TNGST Act, 2017 in Reference No.ZD330124162191Y dated 31.01.2024 along with Summary of the Order dated 31.01.2024 on the file of the respondent relating to the F.Y.2018-19 and quash the same.

2. The learned counsel for the petitioner submits that the petitioner is engaged in the business of trading in Cotton Yarn Waste and Banian recycling cotton and the petitioner's GST returns were picked up for scrutiny under Section 61 of TNGST Act, 2017 and a discrepancy being difference between ITC availed in GSTR-2A and ITC utilized in GSTR-3B was raised, thereby raising a tax liability of Rs.9,14,997/- wherein tabulating that there arose discrepancy only in respect of the months of January 2019 to March 2019. Since the respondent sent all the correspondences only through portal and

that too in "view additional notices / order", the petitioner was not able to defend the case. Even the personal hearing notice was also issued in the same portal, the petitioner has not appearing for the same. Thereafter, the petitioner filed an application for rectification under Section 61 of TNGST Act, 2017 on 25.04.2024 enclosing the details along with circular. The respondent, without providing an opportunity to the petitioner, passed the impugned order dated 31.01.2024, which is clear violation of principles of natural justice. He further submitted that the petitioner is willing to deposit 10% of the disputed tax amount and hence, the order passed by the respondent may be set aside and remanded the matter back to the respondent for reconsideration. Hence, he prayed to set aside the impugned order.

3. The learned Government Advocate appearing for the Respondent would submit that though the notice was uploaded by the respondent in the web portal, the petitioner had failed to send a reply and appear before the respondent for personal hearing. However, she 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 Government Advocate for the respondent and perused the materials placed before this Court.

5. In the present case, it appears that the impugned order dated 31.01.2024 issued by the respondent was having digital signature only and no physical copy served on 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 not physically served to him, 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 31.01.2024 is set aside and remanded the matter back to the respondent on condition that the petitioner shall deposit 10% of the disputed tax demand of the impugned assessment year, 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. On production of proof of the deposit, the authorities concerned are directed to de-freeze the petitioner's bank account. 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.

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

12.08.2024

msv

To

The Deputy Commercial Tax Officer,
Office of the Deputy State Tax Officer-1,
Tiruppur Zone-III
Kangeyam Assessment Circle
No.260-261, Tiruppur Main Road,
Kangeyam-638 701

KRISHNAN RAMASAMY, J.

msv

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