IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.22436 of 2024
and W.M.P.Nos.24435 and 24436 of 2024

P E Palaniappa Mudaliar and Sons
Rep. by its Partner C.Vignesh Palaniappa
S/o. Chandrasekar
7/11-34, Mariyamman Koil Street
Kolathur, Salem – 636303 ... Petitioner

Vs.

The Assistant Commissioner (ST)
Mettur Assessment Circle
Salem Division, Zone-II
BSNL Office, DTO Building,
Mettur RS, Salem-636 303. ... 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 order u/s. 73 of TNGST Act 2017 in Ref. No. ZD331223274006T dated 30.12.2023 and Annexure in GSTIN 33AABFP5958K1ZX/ 2017-18 dated 29.12.2023 along with summary of the order in Ref. No.ZD331223274006T dated 30.12.2023 on the file of the respondent for the period from July 2017 to March 2018 and quash the same.

For Petitioner : Mr.I.Dinesh
For Respondent : Mrs.K.Vasanthamala
Government Advocate (Tax)

O R D E R

The present Writ Petition has been filed to call for the records in order u/s. 73 of TNGST Act 2017 in Ref. No. ZD331223274006T dated 30.12.2023 and Annexure in GSTIN 33AABFP5958K1ZX/ 2017-18 dated 29.12.2023 along with summary of the order in Ref. No.ZD331223274006T dated 30.12.2023 on the file of the respondent for the period from July 2017 to March 2018 and quash the same.

2. The learned counsel for the petitioner submits that the petitioner is a Partnership Firm engaged in the business of retail trading of textiles, which obtained GST registration number w.e.f 01.07.2017. The petitioner was initially filing VAT returns. After the month of July, 2017, the petitioner filed GSTB-3B for the FY 2017-18 staring from the month of July, 2017 to March, 2018 and the Annual return was auto generated in form GSTR-2A. While so, on 07.09.2023 and 08.09.2023, the respondent issued a show cause notice and a summary show cause notice respectively stating that on verification of the returns filed for the year 2017-18 stating that the petitioner firm has claimed excess ITC of Rs.71,032/- on inward RCM supplies in GSTR-3B when compared with the details reported in

Reverse charge liability declared in GSTR-3B. He further submitted that the petitioner was unaware of the show cause notice in DRC-01 dated 07.09.2023 and no reply was sent by the petitioner. Therefore, the respondent had issued an order under Section 73 of the Act dated 29.12.2023 along with the summary order under Section 73 of the Act dated 30.12.2023.

(ii). He further submitted that the respondent failed to issue a pre-show cause notice in DRC-01A, before issuing the show cause notice. Therefore, the order passed by the respondent is in 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.

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 30.12.2023 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 30.12.2023 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. After receipt of the reply, the authorities concerned shall fix a date for personal hearing by sending a physical notice to the petitioner 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

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
msv

To
The Assistant Commissioner (ST)
Mettur Assessment Circle
Salem Division, Zone-II
BSNL Office, DTO Building,
Mettur RS, Salem-636 303.

KRISHNAN RAMASAMY, J.

msv

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