IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Dated : 14.08.2024**

Coram

**The Hon'ble Mr.Justice Krishnan Ramasamy**

**W.P.No.23083 of 2024 and**
**W.M.P.Nos.25188 & 25190 of 2024**

M/s.D.G.Construction
Rep., by its Parter Mr.Venkatesan Dhakshana Moorthy,
1/232, Bajanai Koil Street,
Padiyanallur, Tiruvallur,
Tamil Nadu 600 052. ...Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
Cholavaram Assessment Circle,
Tiruvallur, Tamil Nadu.
2. The Assistant Commissioner (ST),
Cholavaram Assessment Circle,
Integrated Building for Commercial Taxes Department,
No.32, Elephant Gate Bridge Road,
(Near Elephant Gate Police Station),
Walltax Road, Vepery,
Chennai 600 003. ... Respondents

**Prayer:** This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, call for the records of the first respondent in GSTIN:33AHFD3874G1ZH/2017-18 and consequential Order u/s 73 and Summary of the order in Form GST DRC-07 bearing Reference No.ZD331223234249N dated 28.12.2023 along with the Recovery Notice passed by the second respondent dated 15.05.2024 and quash the same.

For Petitioner : Mr.Rupesh Sharma
For Respondents : Mr.J.N.C.Kaushik,
Additional Government Pleader (Taxes)

**ORDER**

This Writ Petition has been filed by the petitioner challenging the order dated 28.12.2023 passed by the first respondent for the Assessment Year 2017-2018.

2. Mr.J.N.C.Kaushik, learned Additional Government Pleader (Taxes), takes notice on behalf of the respondents. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. Alleging that there is a mismatch of tax liability filed by the petitioner for the financial year 2017-2018, the fist respondent passed an impugned order, dated 28.12.2023, demanding the payment of the differential amount in respect of the impugned assessment period.

4. The learned counsel for the petitioner submitted that Show Cause Notice dated 17.08.2023 in Form DRC-01 raised on the petitioner in the GST

common portal, as the petitioner was unable to file their reply for the reason that the 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 submitted that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner.

5.1. The learned counsel for the petitioner would further submit that, the petitioner came to know about the impugned proceeding intiated against him by virute of Recovery Notice dated 15.05.2024, proposing to attach the petitioner's Bank account. Pursuant to the attachment of petitioner's Bank account, 20% of the disputed tax liability has already been collected by the respondents. Hence, he sought for appropriate orders from this Court for affording an opportunity to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings.

6. Mr.J.N.C.Kaushik, Additional Government Pleader (Taxes) appearing for the respondents would submit that subject to the verification of the payment of 20% of the disputed tax liability, this Court can consider and

pass appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader (Taxes) for the respondents 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 28.12.2023 passed by the first respondent with the following directions:-

(i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration in respect of the impugned assessement period. Since 20% of the disputed tax liability has already been paid by the petitioner, this Court is not inclined to impose any further condition.

(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 respondents 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.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment made on the Bank account of the petitioner cannot survive any longer and hence, it is lifted. The first respondent is directed to instruct the Bank to de-freeze the Bank account of the petitioner immediately upon the production of a copy of this order, in case if the petitioner's Bank account is attached.

10. With the above directions, this writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.

**14.08.2024**

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

To
1. The Deputy Commercial Tax Officer,
Cholavaram Assessment Circle,
Tiruvallur, Tamil Nadu.
2. The Assistant Commissioner (ST),
Cholavaram Assessment Circle,
Integrated Building for Commercial Taxes Department,
No.32, Elephant Gate Bridge Road,
(Near Elephant Gate Police Station),
Walltax Road, Vepery,
Chennai 600 003.

**Krishnan Ramasamy,J.,**

jd

**W.P.No.23083 of 2024**

**14.08.2024**