IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.23088 of 2024 and
W.M.P.No.25195 of 2024

GRACE MARKETING,
Rep. by its Managing Director
Mr.Moses Anand Raj,
Door No.3A/Plot No.9, Church Road,
Bharathidasan Nagar,
West Tambaram,
Chennai 600 045. ...Petitioner

Vs.

1. The Assistant Commissioner (ST),
Tambaram Assessment Circle,
Room No.342,
Integrated Commercial Taxes Building,
Chennai-600 035.

2. The Deputy Commissioner (ST),
GST Appeal,
Chennai-II. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the files of the first respondent in his order passed against the petitioner No.GSTIN/ID: 33ANSPM9635J1ZB/2017-18 dated 20.12.2023 and quash the same.

For Petitioner : Mr.G.Saravanan
For Respondents : M/s.Amirtapoonkodi Dinakaran, Government Advocate (Taxes)

ORDER

Challenging the order passed by the first respondent dated 20.12.2023, the petitioner has filed the present Writ Petition.

2. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (Tax), takes notice on behalf of the respondent.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. Alleging that there is a mismatch of tax liability of Rs.2,02,421.49/- between Form GSTR 2A and GSTR 3B filed by the petitioner for the financial year 2017-2018, the fist respondent passed an impugned order, dated 20.12.2023, demanding the payment of the mismatch amount with interest and penalty.

5. The learned counsel for the petitioner submitted that Show Cause Notice dated 29.09.2023 in Form DRC-1 raised on the petitioner in the GST

common portal, as the petitioner was unaware of the same, he failed to respond the said notice. Further, he would submit that his 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. Even an impugned order was uploaded in the GST portal under "View the notices and orders" tab and the physical version of such order was not served on the petitioner. It is also submitted that, if an opportunity is provided and the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

6. The learned Government Advocate appearing for the respondent would submit that subject to the deposit of 10% of the disputed tax by the petitioner in respect of the impugned assessment period, this Court can consider and pass appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent 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 20.12.2023 passed by the first respondent with the following directions:-

(i) The order impugned herein is set aside and the matter is remanded to the respondents for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax to the respondents within a period of four weeks from the date of receipt of a copy of this order; and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(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.

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

Krishnan Ramasamy,J.,
jd

To
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