IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.23084 of 2024 and
W.M.P.Nos.25186 & 25189 of 2024

SIMRAN ENTERPRISES,
Represented by its Manager Mrs.Bhavani,
No.27, 3rd Floor, Kamarajer Colony, 3rd Street,
Kodambakkam,
Chennai 600 024. ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
Kodambakkam: Central-III: Central,
No.1, PAPJM Annex Building,
4th Floor, Greams Road,
Chennai-600 006. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records the respondent in DRC-07 Reference number ZD330424254922G/2018-19 dated 30.04.2024 and quash the same as arbitrary, illegal.

For Petitioner : M/s.V.Vijayalakshmi

For Respondent : Mr.G.Nanmaran,
Special Government Pleader (Tax)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order 30.04.2024 passed by the respondent for the impugned assessment year 2018-2019.

2. Mr.G.Nanmaran, learned Special Government Pleader (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 time of admission stage itself.

4. Alleging that there is mismatch in Input Tax Credit (ITC) claimed between GSTR 3B and GSTR 2B filed by the petitioner for the assessment year 2018-2019, the respondent passed an impugned order dated 30.04.2024, demanding the payment of differential amount along with interest and penalty in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that the respondent had issued a notice in DRC-01 dated 06.10.2023 stating that there is mismatch in ITC claimed between GSTR 3B and GSTR 2B filed by the petitioner in

respect of the impugned assessment period. In response, the petitioner had filed a detailed reply on 16.11.2023 and the same was uploaded in the GST portal. Thereafter, the respondent had issued reminder notice 1 dated 09.04.2024, in which, the date of personal hearing was mentioned as 10.04.2024 at 12.00 p.m and the same was uploaded in the common portal at 18.51 hours, which is beyond the office hours. Further, the respondent granted time for filing the additional reply and the same was to be filed on or before 12.04.2024. The petitioner had filed the additional reply on 23.04.2024, and thereafter, the respondent has not provided any opportunity of personal hearing, and passed the present impugned order on 30.04.2024, in violation of principles of natural justice. Hence, he sought for appropriate orders from this Court for affording an opportunity of personal hearing to the petitioner to present the case and participate in the proceedings.

6. Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondent, contended that by virtue of reminder 1 notice dated 09.04.2024, the petitioner was granted an opportunity of personal hearing on 10.04.2024 and the respondent had also granted time for filing additional reply and the same was to be submitted on or before 12.04.2024. Therefore, he submitted that the sufficient opportunity was provided to the petitioner and

hence, he prayed for dismissal of the present Writ Petition.

7. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondent and perused the materials available on record.

8. On perusal of the record, it appears that the respondent issued Form GST DRC-01 on 06.10.2023 and the petitioner has filed the reply to the said Show Cause Notice on 16.11.2023. The personal hearing reminder notice 1 dated 09.04.2024 was uploaded on the common portal at 18.51 hours by fixing the date of peronal hearing as 10.04.2024 at 12.00 p.m. It is apparent that beyond the office hours, the respondent uploaded the reminder 1 notice dated 09.04.2024, by fixing the date of personal hearing on the very next day. In the event of affording an opportunity of personal hearing to the petitioner for the first time, the respondent ought to have given atleast 21 days clear notice to the petitioner. If such time is granted, the petitioner would be in a position to prepare itself in a proper manner and fortify its stand based on the relevant documents. In the present case, sufficient time was not provided to the petitioner and it is impossible for the petitioner to prepare and present its case during the personal hearing scheduled on the very next date.

9. It is seen from the reminder-1 notice, that the respondent fixed the date for filing of additional reply as 12.04.2024. This Court is unable to understand the reason for fixing the personal hearing, two days ahead of filing of the additional reply. It is pertinent to note that, after the completion of the pleading alone, the petitioner can put-forth its case. However, in the present case, before filing of the additional reply, the respondent passed the impugned order and it is clearly in gross violation of the principles of natural justice. Though the petitioner filed its reply on 23.04.2024, the same was not considered by the Officer concerned and the impugned order came to be passed. On the sole ground of violation of the bare bones of principles of natural justice, the impugned order dated 30.04.2024 is liable to be set-aside.

10. In the light of the above, this Court issues the following directions:-

(i) The impugned order herein is set-aside.

(ii) The petitioner is directed to file an additional reply/objections along with relevant documents, if any, within a period of two weeks from the date of receipt of a copy of this order.

(iii) On receipt of such additional reply/objections by the petitioner, the respondent shall consider the same and issue a 14 days clear notice to the petitioner by fixing the date for personal hearing and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

11. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

14.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The Deputy Commercial Tax Officer,
Kodambakkam: Central-III: Central,
No.1, PAPJM Annex Building,
4th Floor, Greams Road, Chennai-600 006.

<u>Krishnan Ramasamy,J.,</u>
jd

<u>W.P.No.23084 of 2024</u>

14.08.2024