IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.23755 of 2024 &
W.M.P.No.25993 of 2024

M/s.A & A Builders and Promoters,
Rep by its Partner Anitha,
W/o.Aravindan,
No.42, Patel Street,
Erode 638 001 ... Petitioner

Vs.

The State Tax Officer,
Brough Road Circle,
Erode 638 011 ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records for the issuance of the impugned proceedings of the respondent by the order to quash the same with Ref.No.ZD3312232539595 dated 29.12.2023 along with the previous order in Ref.No.ZD3312233236944H dated 28.12.2023 issued in same GSTIN 33AAQFA2994R2ZK in the year 2017-2018 by the respondent and to re-do assessment.

For Petitioner : Mr.R.Prakalathan
for Mr.M.R.Radhakrishnan

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

ORDER

Challenging the order dated 29.12.2023 and the previous order dated 28.12.2023 passed by the respondent under the same GSTIN 33AAQFA2994R2ZK for the year 2017-2018 and also seeking a direction to the respondent to re-do the assessment, the present writ petition has been filed before this court.

2. The learned counsel for the petitioner submits that the petitioner registered the partnership Company with the respondent and obtained a Registration Certificate in the year 2017. The respondent had erroneously issued two different orders for the

same Assessment Year 2017-2018 under Ref.No.ZD3312232539595 dated 29.12.2023, along with the previous order in Ref.No.ZD3312233236944H dated 28.12.2023. On 12.09.2023, a notice of Audit Observation was issued by the respondent for the Financial Year 2017-2018 stating the total amount due as Rs.50,65,982/-. Again, on 14.09.2023, within a short span of 9 days, the respondent levied a penalty amount of Rs.5,00,000/- without issuing any notice to the petitioner. To their shock and surprise, on 25.09.2023, a show cause notice was issued in Form GST DRC 01 by the respondent stating that a sum of Rs.76,67,884/- was to be paid for the financial year 2017-2018. He would further submit that on 28.12.2013, an assessment order was issued to the petitioner to pay a sum of Rs.51,55,850/- as tax for the Financial year 2017-2018. Again on 29.12.2023, for the same Financial Year 2017-2018 under the same GSTIN, the respondent issued another assessment order demanding the payment of

Rs.76,67,884/-. He would further submit that though a reply was filed by the petitioner, the respondent failed to consider the same. He would also submit that the respondent has incorrectly mentioned the financial year as 2018-2019 instead of 2017-2018 in the assessment order dated 29.12.2023. Thus, according to the learned counsel, the impugned order was passed without providing any opportunity of hearing to the petitioner to submit their reply, which is violative of the principles of natural justice. However, the learned counsel submitted that the petitioner is now ready and willing to pay 10% of the disputed tax made by the respondent in the event of providing an opportunity to them to file their reply/objections along with the required documents to substantiate their claim.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) appearing for the respondent and perused the materials available on record.

4. Having regard to the admitted fact that the two impugned orders came to be passed without application of mind and in violation of the principles of natural justice, and considering the submissions made by the learned counsel on either side, this Court passes the following order:-

(i) The orders dated 28.12.2023 and 29.12.2023 impugned herein are set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay a 10% of disputed tax to the respondent 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 respondent shall consider the same after issuing a 14 days clear notice by fixing the date of personal hearing and thereafter pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

5. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.

11.09.2024

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

srn

To

The State Tax Officer,
Brough Road Circle,
Erode 638 011

KRISHNAN RAMASAMY.J.,

srn

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