IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.23787 of 2024 &
W.M.P.Nos.26227 of 2024 & 26028 of 2024

EAST ASIA TANNING CO,
Represented by its Partner: Mr.Pakkar Naveed Ahmed,
11/23, Door No.8,
2nd Floor, AL MAMOOR,
Vepery High Road,
Periamet,
Chennai- 600 007. ... Petitioner

Vs.

1. The Commercial Tax Officer,
   Choolai: North-III: Chennai
   Presently at:
   No.1 Greams Road,
   PAPJM Annex Building, First Floor,
   Chennai- 600 006.

2. The State Tax Officer,
   VEPERY Assesment Circle, Presently at
   No.1, Greams Road,
   PAPJM Annex Building, First Floor,
   Chennai 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ Of Certiorari to call for the records of the 1st Respondent in DRC 07 Reference Number ZD331223231902U/2017-18 dated 27.12.2023 and to quash the same as arbitrary, illegal.

For Petitioner : Ms.V.Vijayalakshmi

For Respondents : Mr.T.N.C.Kaushik, (Taxes)
Additional Government Pleader

O R D E R

This writ petition has been filed by the Petitioner challenging the order of the 1st Respondent in DRC 07 Reference Number ZD331223231902U/2017-18 dated 27.12.2023 and to quash the same as arbitrary and illegal.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) takes notice on behalf of the respondents.

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

4. The learned counsel for the petitioner submits that initially a show cause notice was issued to the Petitioner on 27.07.2023 and though the documents were readily available with the Petitioner, he was not able to submit the reply for the aforesaid notice for the reason that the partner of the Petitioner Company who was taking care of the Statutory compliances was not well and thereafter without providing any opportunity to the petitioner, the respondent passed the impugned order dated 27.12.2023, demanding tax along with penalty and interest. He further submitted that the Petitioner's consultant has not communicated about the said proceedings to the Petitioner. He came to know of the impugned order only after he received a call from the 1st Respondent for recovery of tax. He therefore prays to set aside the impugned order.

5. On the other hand, the learned Additional Government Pleader (Taxes) would submit that the respondent initially issued the show cause notice for which the Petitioner failed to submit reply in time and therefore the impugned assessment order came to be passed.

6. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 10% of the demand made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Additional Government Pleader (Taxes) has no serious objection.

7. Heard both sides. Perused the records.

8. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

9. In the present case, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned

order. Hence, this Court is of the view that the impugned order was passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 27.12.2023 passed by the respondent. Accordingly, this Court passes the following order:--

(i) The order impugned herein is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall 10% of the 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 orders 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 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. Accordingly, this writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

21.08.2024

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

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