IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.24030 of 2024
and
W.M.P.Nos.26286 & 26287 of 2024

M/s.Evershine Services,
Represented by its Partner Mr.Ahamed Basheer,
No.2/2, First Floor, Selvanathan Street,
Chetpet, Chennai 600 031. ...Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
Egmore Assessment Circle,
No.88, Mayor Ramanathan Salai,
Spurtank Road, Chetpet,
Chennai-600 031.

2. The Assistant Commissioner (ST),
Egmore Assessment Circle,
No.88, Mayor Ramanthan Salai,
Spurtank Road, Chetpet,
Chennai-600 031. ... 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 in the order passed by the 1st respondent in summary of Order in DRC-07 Ref.No.ZD3301230058213 dated 03.01.2023 and to quash the order as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.Amirta Poonkodi Dinakaran
Government Advocate (Tax)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 03.01.2023 passed by the first respondent.

2. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (Tax), takes notice on behalf of the respondent. By consent of the parties, the main Writ Petition is taken up for disposal at the time of Admission stage itself.

3. The learned counsel for the petitioner submitted that the second respondent had uploaded an intimation in DRC-01A dated 20.05.2022 in the GST portal, directing the petitioner to pay a sum of Rs.3,34,548/- on the ground that the petitioner had not submitted the supportive documents such as LUT and BRC for the refund claim. Pursuant to the intimation of DRC-01A, the first respondent, on the same ground, uploaded a Summary of Show Cause Notice in DRC-01 dated 24.11.2022 raised on the petitioner in the GST common portal

under "View Additional Notices/orders", as the petitioner was unaware of the said notices, he failed to respond the same. Further, he submitted that the Summary of Show Cause Notice and the Summary of order in DRC-07 dated 03.01.2023 were all uploaded in the GST common portal under "View Additional Notices/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, the petitioner would be able to substantiate its case and also he agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

4. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (Tax) appearing for the respondents 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 remand the matter to the Authority concerned for passing appropriate orders.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents and perused the materials available on record.

6. 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 and summary of order were 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.

7. For the reasons stated above, this Court is inclined to set aside the impugned order dated 03.01.2023 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 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 first respondent shall consider the same and issue a 14 days clear notice by fixing the date for 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.

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

23.08.2024

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

Krishnan Ramasamy,J.,
jd

To
1. The Deputy Commercial Tax Officer,
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No.88, Mayor Ramanathan Salai,
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