IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.23998 of 2024 &
W.M.P.Nos.26262, 26264 and 26265 of 2024

M/s.Sumangali & Co
Represented by its Partner
Mr.R.Mohan,
No.151, Erukanchery High Road,
Vysarpadi, Chennai- 600 039. ... Petitioner

Vs.

1. The Assistant Commissioner (ST)
   Washermenpet Assessment Circle
   Integrated Commercial Taxes Building
   No.32, Elephant Gate Bridge Road
   Chennai- 600 003.

2. The Branch Manager
   Andhra Bank
   No.231, Purasalkam High Road,
   Chennai- 600 023. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in

GSTIN:33AANFS0965M1ZP/2017-2018 dated 23.12.2023, the order passed under Section 73 and the summary of the order dated 23.12.2023 issued in Reference ZD331223186958Z and quash the impugned orders as passed contrary to provisions of the CGST/TNGST Act, 2017 and also against the principles of natural justice.

For Petitioner : Mr.Raj Kumar P

For Respondents : Mr.T.N.C.Kaushik (R1)
Additional Government Pleader (Taxes)

O R D E R

This writ petition has been filed by the petitioner challenging the impugned proceedings of the first respondent in GSTIN:33AANFS0965M1ZP/2017-2018 dated 23.12.2023 passed under Section 73 of the TNGST Act, 2017 and the summary of the order dated 23.12.2023 issued in Reference ZD331223186958Z and to quash the same.

2. Mr.J.N.C.Kaushik, learned Additional Government Pleader (Taxes) takes notice on behalf of the 1st respondent.

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 would submit that the 1st Respondent issued show cause notice to the Petitioner on 20.09.2023 asking the Petitioner to file their reply within a period of 30 days from the date of notice and personal hearing was fixed on 27.09.2023. According to the learned counsel, personal hearing should be fixed only after the expiry of time limit to file objections and not during the period granted to file objections and the Respondent ought not to have fixed personal hearing on 27.09.2023 i.e., before the expiry of 30 days time for filing the reply and the same is contrary to the provisions of law. Thereafter, impugned order came to be passed by the 1st respondent as if no reply was filed by the petitioner to the show cause notice issued. Subsequently, the 1st Respondent issued bank attachment notice to the 2nd Respondent directing the 2nd Respondent to attach the bank account of the Petitioner.

5. Further, he would submit that the respondents have not provided any opportunity of personal hearing to the petitioner prior to the passing of impugned order and hence, he requests this Court to set aside the same. He would also submit that the 1st Respondent has issued the 1st show cause notice to the Petitioner on 08.05.2023, pursuant to which the Petitioner has paid a sum of Rs.10,83,400/- and hence prays to set aside the impugned order.

6. On the other hand, the learned Additional Government Pleader (Taxes) appearing for the 1st Respondent would submit that the 1st respondent has uploaded the show cause notice on the GST Online Portal, but the petitioner failed to submit the reply. Further, he has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, he requested this Court to remit the matter to the respondent, subject to the verification of payment of Rs.10,83,400/-, for which the learned counsel for the Petitioner submitted that he will file proof to that effect before the 1st Respondent.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent and also perused the materials available on record.

8. In the present case, the show cause notice was uploaded on the GST Portal and no reminder notice was uploaded. Further, 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 orders dated 23.12.2023 passed by the 1st respondent. Accordingly, this Court passes the following order:-

> (i) The impugned orders dated 23.12.2023 are set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter, enclosing a copy in proof of the fact that they had already remitted a sum of Rs.10,83,400/-

(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.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment made on the bank account of the petitioner cannot survive any longer and hence, it is lifted. As a sequel, the 2nd respondent is directed to release the attachment on the bank account of the petitioner, immediately upon the production of copy of this order.

9. With the above directions, this writ petition is disposed of. No

costs. Consequently, the connected miscellaneous petitions are also closed.

21.08.2024

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

To

1. The Assistant Commissioner (ST)
   Washermenpet Assessment Circle
   Integrated Commercial Taxes Building
   No.32, Elephant Gate Bridge Road
   Chennai- 600 003.

2. The Branch Manager
   Andhra Bank
   No.231, Purasalkam High Road,
   Chennai- 600 023.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.23998 of 2024 &
W.M.P.Nos.26262, 26264 and 26265 of 2024

21.08.2024