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.24033 of 2024 &
W.M.P.Nos.26292, 26293 and 26294 of 2024

Shanmugavel Senthilrajan
Proprietor of Sri Amman Electricals
59, Raja Street Police Station Road,
Anthiyur, Erode- 638 501. ... Petitioner

Vs.

1. Commercial/State Tax Officer
Bhavani Circle, No.158/1002, Pookadai Veedhi,
Bhavani, Erode- 638001
Tamil Nadu.

2. Assistant Commissioner (ST)(FAC)
Door No.158/1002, Pookadai Veedhi,
Bhavani Assessment Circle,
Bhavani-638301, Tamil Nadu. ... 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 on the file of the Respondents and quash the order under Section 74 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service TAx Act, 2017 dated 27.10.2023 having Reference No.ZD331023176458F along with Summary of the order dated 27.10.2023 having Reference No.ZD331023176458F (Impugned Order) in GSTIN:33DXLPS7990N1ZB for the Year 2020-21 passed by the Second Respondent to the Third Respondent in

Form GSTR DRC-13 under Section 79 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 dated 20.02.2024 for the year 2020-21.

For Petitioner : Mr.Harshit Sharma

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

ORDER

This writ petition has been filed by the petitioner challenging the order passed under Section 74 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service TAx Act, 2017, dated 27.10.2023 along with summary order dated 27.10.2023 for the Year 2020-21 and the consequential recovery notice dated 20.02.2024 passed by the 2nd Respondent to the 3rd Respondent.

2. Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) takes notice on behalf of the 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 in the present case, initially, the respondent has issued a show cause notice dated 31.03.2023 to the petitioner, followed by reminder notice dated 08.08.2023 and the said notices were uploaded in the GST portal. Since petitioner was not aware of the said notices, they had failed to file their reply within the time. Under these circumstances, the orders dated 27.10.2023 came to be passed by the respondent as if no reply was filed by the petitioner for the show cause notice issued by the respondent. Subsequently, the recovery notice dated 20.02.2024 was passed by the 2nd Respondent to the 3rd Respondent directing him to made payment of the tax demand from the bank account of the petitioner and the same was informed to the Petitioner by the 3rd Respondent vide notice dated 21.03.2024 and only receipt of the same, the Petitioner came to know about the impugned orders.

5. Further, he would submit that the respondents have not provided any opportunity of personal hearing to the petitioner prior to the passing of said impugned orders and hence, he requests this Court to set

aside the same. He would also submit that the petitioner is willing to pay 10% of the tax demand to the respondent.

6. On the other hand, the learned Additional Government Pleader (Taxes) appearing for the Respondent would submit that the respondent has uploaded the notices in the GST Online Portal. But the petitioner failed to avail the said opportunity. Further, he has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned orders. Therefore, he requested this Court to remit the matter back to the respondent, subject to the payment of 10% of the disputed tax by the petitioner.

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, since the show cause notice was uploaded in the GST Portal, the same was not brought to the knowledge of the

petitioner, due to which, the petitioner was not in a position to file any reply for the said show cause notice.

9. 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 orders were 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 27.10.2023 passed by the 1st respondent and the consequential recovery notice dated 20.02.2024 issued by the 2nd Respondent to the 3rd Respondent. Accordingly, this Court passes the following order:-

> (i) The impugned orders dated 27.10.2023 are set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of 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 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 orders itself have been set aside, the recovery notice dated 20.02.2024 passed by the 2nd Respondent to the 3rd Respondent cannot survive any longer. As a sequel, the 3rd respondent is directed to defreeze the the bank account of the petitioner immediately upon the production of a copy of this order along with proof with regard to the payment of 10% of the demand amount by the petitioner as stated above.

10. 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
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To

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   Bhavani, Erode- 638001
   Tamil Nadu.

2. Assistant Commissioner (ST)(FAC)
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