IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.24313 of 2024 &
W.M.P.Nos.26562 & 26563 of 2024

Tvl.Balaji Trading Company,
Represented by its Proprietor Raju Choudhury
17/9, Ground Floor, Nainiappan Street,
George Town, Chennai - 600 001. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Kothawalchavadi Assessment Circle,
Office of the Assistant Commissioner (ST)
Kothawalchavad :North-I Chennai North,
ICTO Complex, Room No.312,
Elephant Gate Bridge Road,
Chennai - 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent passed in GSTIN:33AGTPC4162E1ZM/2017-18, dated 15.11.2023 and consequential order under Section 73 and Summary of the Order in Form GST DRC-07 having Reference No.ZD331123091686C both dated 16.11.2023 relating to Financial year 2017-18 and quash the same as illegal, contrary to the provisions of the Act, arbitrary and against the principles of natural justice.

For Petitioner : M/s.Pooja Chopda

For Respondent : Mr.G.Nanmaran
Special Government Pleader (Taxes)

ORDER

The writ petition has been filed challenging the order of the respondent dated 15.11.2023 and the consequential order under Section 73 and summary of the order in Form GST DRC-07 both dated 16.11.2023 relating to the financial year 2017-18.

2. The learned counsel for the petitioner contends that the respondent issued an intimation in Form GST DRC-01A dated 20.06.2023, and a notice in Form GST DRC-01 dated 10.08.2023, proposing to levy tax on the grounds of alleged discrepancies between GSTR-1 and GST R-B, and the alleged excess availment of Input Tax Credit (ITC). The learned counsel further submits that the petitioner, under the bona fide belief that its consultant had submitted a suitable response to the notices, was surprised when the respondent issued a demand notice on 04.06.2024 confirming the alleged tax arrears along with interest and penalty. Subsequently, the respondent passed the impugned orders confirming the proposals in the notices, on the grounds that no reply had been filed to the said notices.

3. On the other hand, the learned Special Government Pleader (Taxes) would submit that the respondent uploaded the notice for personal hearing in the GST Online Portal. But the petitioner failed to avail the said opportunity. He would further submit that now, the petitioner can very well approach the Appellate Authority. Hence, he prayed for appropriate orders.

4. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 10% of the disputed tax in the event of providing an opportunity to them to file their reply/objections along with the required documents to substantiate their claim, for which, the learned Special Government Pleader (Taxes) has no serious objection.

5. Having regard to the admitted fact that the impugned orders came to be passed without hearing the petitioner in violation of the principles of natural justice, and also considering the submissions made by the learned counsel on either side, this court passes the following order:-

> (i) The orders 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 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 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.

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

28.08.2024

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

KRISHNAN RAMASAMY.J.,

r n s

W.P.No.24313 of 2024 &
W.M.P.Nos.26562 & 26563 of 2024

28.08.2024