IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.09.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.25413 of 2024
and
W.M.P.No.27786 & 27788 of 2024

M/s. Bearing Trade Centre,
rep. by its Proprietor,
Mr.Sushil Kumar Singh. ...Petitioner

Vs.

The Office of the Deputy Commercial Tax Officer,
Harbour North-I , Chennai North,
Room No.327, Integrated Building
For Commercial Taxes Building,
Chennai North Division,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the respondent in impugned order dated 08.12.2023 in GSTIN : 33DMCPS2396C1Z3/2017-18 for July 2017-March 2018, came to be passed by the respondent as per the provisions under Sections 73 and 50 of the GST Act, directing the petitioner to pay a sum of Rs.8,92,513/- including the interest due for the period from 20.04.2018 to 08.12.2023 and to quash the same as illegal.

For Petitioner : Mr.Pranav Jain

For Respondent : Mr. V.Prashanth Kiran
Government Advocate (T)

Order

The challenge in this Writ Petition is to the order dated 08.12.2023 passed by the respondent as per the provisions under Sections 73 and 50 of the GST Act, whereby, the petitioner has been directed to pay a sum of Rs.8,92,513/- including the interest due for the period from 20.04.2018 to 08.12.2023 and to quash the same as illegal.

2. Mr.Pranav Jain, learned counsel for the petitioner would submit that all the notices/communications, which culminated in the impugned orders were merely uploaded to the GST Portal under "View Additional Notice and Orders" and the petitioner's Accountant had not noticed the same, as they were all busy in completing the audit proceedings upto the FY 2017-18, therefore, they had no occasion to peruse the said notices and give reply, however, the respondent proceeded to pass the impugned order dated

08.12.2023 alleging that the petitioner has failed to file returns for six months.

3. Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and liable to be aside, as the petitioner has not been afforded with any opportunity of personal hearing. However, the learned counsel would submit that in the event, this Court is inclined to set aside the impugned order, the petitioner is agreable to pay 10% of the disputed tax amount and hence, prayed for appropriate orders.

4. Mr. V.Prashanth Kiran, learned Government Advocate (T), for the respondent fairly submitted that if the petitioner is ready and willing to deposit 10% of the disputed tax, then, the prayer sought for by the petitioner may be considered.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. The petitioner is a dealer in Iron and Steel raw-materials and an assessee on the files of the respondent. For the AY 2017-18, the respondent issued a notice in DRC 01 dated 21.09.2023 calling upon the petitioner to pay ITC wrongly availed at the time of transmission of VAT to GST. However, since the petitioner's Accountant was busy in completing the audit proceedings upto the FY 2017-18, he had not noticed the show cause notice, but, the respondent without affording any opportunity of personal hearing to the petitioner, proceeded to confirm the demand contained in the show cause notice by virtue of the impugned order.

6.1 Thus, it is crystal clear that the impugned order came to be passed against the petitioner, behind their back, as the respondent has not taken any steps to serve any notices/communications, particularly, show cause notice/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, hence, the petitioner, was not aware of any such notices. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned order and this is sufficient to hold that the impugned order is nothing but ex parte order, which is unsustainable in the eye of law and the notices/communications, which was merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, can no longer be deemed to be a sufficient service.

7. In the light of the above findings, this Court is inclined to set aside the impugned order dated 08.12.2023 as the same suffers from violation of principles of natural justice.

8. Accordingly, this Court passes the following orders:-

i) The impugned order dated 08.12.2023 is set aside and the matter is remanded back to the Authority concerned for fresh consideration.

ii) While remanding the matter, it is made clear that the impugned order is set aside subject to the condition that the petitioner deposits 10% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order.

iii) Thereafter, the petitioner shall file a reply within two weeks and after the filing of reply, the respondent is directed to provide personal opportunity of hearing by issuing clear 14 days notice and after hearing the petitioner in full, shall pass necessary orders in accordance with law.

9. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.09.2024

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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