IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.25640 of 2024 &
W.M.P.Nos.28001 & 28003 of 2024

Vadachettiyendal Anaikattu Aaru Eri,
Paasanathararg al Sangam,
represented by its President,
A.Manivannan,
2/243, Friends Street,
Vadasemapalayam,
Sankarapuram TK, Kallakurichi District,
TamilNadu-606 208. ...Petitioner

Vs.

1. The State Tax Officer (ST),
Tirukoilur Assessment circle,
CT Buildings, Peirya Sevalai Road,
Tirukoilur.

2. State Bank of India,
Represented by its Branch Manager,
Sankarapuram,
Kallakurichi Main Road,
Sankarapuram-606 401. ... 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 on the file of the 1st respondent herein in GSTIN:33AAFAV3354E1ZO/2020-2021 dated 31.08.2023 and quash the same.

For Petitioner : M/S.R.Vasumithran
For Respondent 1 : Mr.V.Prashanth Kiran
Government Advocate (Tax)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 31.08.2023 passed by the first respondent for the financial year 2020-2021.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Taxes), takes notice on behalf of the first respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. Alleging that there is a mismatch of tax liability between Form GSTR-3B and GSTR-7 filed by the petitioner for the financial year 2020-2021, the first respondent passed an impugned order dated 31.08.2023, demanding the payment of differential amount along with interest and penalty in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that the notices in Form DRC-01A, DRC-01 and DRC-07 raised on the petitioner in the GST common portal. Since the petitioner's GST registration was cancelled, the petitioner had no occasion to gone through the GST Portal. Hence, the petitioner failed to reply the said Show Cause Notices, which led to the passing of the present impugned order. He submitted that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner. The petitioner came to know about the impugned order dated 31.08.2023 from the second respondent/Bank on account of recovery proceedings by way of freezing the petitioner's Bank account. Hence, he sought for appropriate orders from this Court for affording an opportunity to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings. 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.

6. Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) appearing for the first respondent submitted that upon production of the

payment of 10% of the disputed tax in respect of the impugned assessment period, this Court can remand the matter to the Authority concerned for passing appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) for the first respondent and perused the materials available on record.

8. 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 notices were uploaded on the GST Portal Tab. According to the petitioner, the petitioner was unaware of the issuance of the show cause notices issued through the GST Portal and the original of the said show cause notices were 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.

9. For the reasons stated above, this Court is inclined to set aside the impugned order dated 31.08.2023 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 in respect of the impugned assessment period 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.

(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. The second respondent is directed to defreeze the Bank account of the petitioner immediately upon the production of a copy of this order, in case the petitioner's Bank account is attached.

10. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

06.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
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Krishnan Ramasamy,J.,
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