IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.26185 of 2024 &
W.M.P.Nos.28622 of 2024 & 28623 of 2024

M/s.Saravana Garments,
Rep.by its Proprietor,
522, Somu Palace,
Thadagam Road, R.S.Puram,
Coimbatore, Tamil Nadu-641 002. ... Petitioner

Vs.

1. The Assistant Commissioner (ST),
   R.S.Puram Circle,
   Coimbatore: 641 018
   Tamil Nadu.

2. The State Tax Officer,
   R.S.Puram Assessment Circle,
   Coimbatore:641 018
   Tamil Nadu. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the impugned order in Ref.No.ZD330424113673P dated 15.04.2024 for the Financial Year 2018-19 passed under Section 73 of the CGST/TNGST Act, 2017 and uploaded along with summary of order in DRC07 from the files of the first respondent herein, quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Taxes)

ORDER

This writ petition has been filed by the petitioner challenging the order dated 15.04.2024 passed by the respondent and to quash the same.

2. The learned counsel for the petitioner submits that initially the Petitioner was issued with a Show Cause Notice on 18.12.2023, followed by reminder notice on 21.03.2024, for which the Petitioner vide letter dated 21.12.2023 sought time for giving proper reply. Thereafter the 1st Respondent issued a personal hearing notice on 21.03.2024, asking the Petitioner to appear before it on 25.03.2024. In compliance of the same, the Petitioner appeared before the 2nd Respondent along with required documents. Subsequently, the Petitioner paid the disputed tax. Thereafter, the 2nd Respondent vide order dated 24.04.2024 dropped the proceedings against the Petitioner.

3. While the matter stood thus, the 1st Respondent during the month of August 2024, informed the Petitioner that the impugned assessment order has already been passed by the 1st Respondent on 15.04.2024 prior to the

aforesaid order dated 24.04.2024 passed by the 2nd Respondent. Thereafter, on verification the Petitioner came to know that already a show cause notice dated 28.12.2023 has been issued subsequently after the issuance of the aforesaid show cause notice dated 18.12.2023 and the same was uploaded in the "View Additional notices and orders" tab in the GST portal. Since the Petitioner was not aware of the same, they could not file reply and therefore the impugned assessment order came to be passed on 15.04.2024 and the same was also uploaded in the GST portal. Therefore, he would submit when the 2nd Respondent seized the matter, the 1st Respondent ought not to have arbitrarily initiated the assessment proceedings parallelly against the Petitioner by issuing Show Cause Notice dated 25.11.2023 and hence prays to set aside the impugned order.

4. On the other hand, the learned Government Advocate (Taxes) appearing for the Respondents submitted that the the Show Cause Notice dated 28.12.2023 was uploaded in the GST Portal, followed by two reminders, but the Petitioner has not chosen to reply the same and therefore impugned assessment order came to be passed and he prays for appropriate orders.

5. 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 liability made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Government Advocate (Taxes) has no serious objection.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the respondent and also perused the materials available on record.

7. In the present case, two show cause notices were issued and the petitioner has duly submitted the reply for the 1st Show Cause Notice and also paid the tax demand and hence the proceedings were dropped by the 2nd Respondent. Since the Petitioner was not aware of the 2nd Show Cause Notice dated 28.12.2023 they were not in a position to file reply for the same and the 1st Respondent without giving an opportunity of personal hearing passed the impugned order. Hence, this Court is of

the view that the impugned order is 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 order dated 15.04.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 15.04.2024 is 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.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

09.09.2024

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

1. The Assistant Commissioner (ST),
   R.S.Puram Circle,
   Coimbatore: 641 018
   Tamil Nadu.

2. The State Tax Officer,
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KRISHNAN RAMASAMY.J.,
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