IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.25955 of 2024 &
W.M.P.Nos.28335 & 28336 of 2024

M/s.Aadhi Cars Private Limited,
(Represented by its Managing Director
Mr.Srinivasan Sathasivam)
93H, Maruthi Suzuki, Arena Aadhi Cars,
Sathy Road, Coimbatore,
Tamil Nadu - 641 035. ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Saravanampatti Assessment Circle,
Commercial Taxes Office Building,
Dr.Balasundaram Road,
Coimbatore - 641 018. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in passing the impugned order Reference No.ZD3304242560010, dated 30.04.2024 for the tax period 2018-2019 and quash the same as it has been issued in contravention on principles of natural justice, without proper application of mind, contrary to the provisions of law.

For Petitioner : Mr.Vijaya Narayan
Senior Counsel
For Mr.K.Vaitheeswaran

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

ORDER

Mr. C. Harsha Raj, learned Additional Government Pleader (Taxes), takes notice for the respondent.

2. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. The petitioner has filed this writ petition challenging the order in Reference No.ZD3304242560010, dated 30.04.2024 passed by the respondent for the period 2018-2019.

4. The learned Senior Counsel appearing for the petitioner submits that the respondent initially issued a DRC-01 notice dated 27.12.2021, followed by a Show Cause Notice in Form GST DRC-01 dated 15.07.2022, citing four main discrepancies, viz., (a) short payment of tax upon comparing GSTR-9 and GSTR-3B, (b) irregularity in reporting transactions attracting TDS, (c) short payment of interest due to delayed tax payment, and (d) claiming of ITC for the period 2017-2018. The petitioner responded with a detailed reply on 16.08.2022, disputing the alleged discrepancies and providing supporting documents. However, another DRC-01 notice dated

26.09.2023 was issued based on a comparison of GSTR-3B, GSTR-1, and GSTR-2A for FY 2018-2019. The petitioner responded to this as well, leading to the issuance of a Drop Proceedings order dated 16.12.2023. Despite the resolution of these issues, the petitioner received a notice in Form ADT-01 on 21.04.2023, followed by audit observations and another Show Cause Notice dated 09.01.2024. The petitioner only became aware of this latter notice when it was uploaded on the GST portal, along with multiple other notices related to the same audit proceedings. The learned Senior Counsel argues that the discrepancy raised in the Form GST DRC-01 notice dated 15.07.2022 and the fourth discrepancy in the Form GST DRC-01 notice dated 09.01.2024 are identical, leading to a multiplicity of proceedings without valid justification. Furthermore, the petitioner was unaware of certain notices because they were served solely vide the GST portal, which may not be accessible to all members of the business community. He would further submit that the impugned order passed by the respondent violates principles of natural justice, as the petitioner has been denied a proper opportunity to present a reply. However, the petitioner is now willing to pay an amount as fixed by the Court, provided an opportunity is granted to file a reply/objection with supporting documents.

5. *Per contra,* the learned Additional Government Pleader for the respondent submits that the two show cause notices are independent, and the discrepancies in the DRC-01 notices dated 15.07.2022 and 09.01.2024 are not the same. The former notice raised four discrepancies, while the latter raised 14. However, the counsel has no objection to granting relief to the petitioner, subject to certain terms.

6. I have considered the submissions made by both counsels and perused the materials on record.

7. Upon consideration, it is evident that two show cause notices were issued: one on 15.07.2022 and another on 09.01.2024. The first discrepancy in the notice dated 15.07.2022 and the fourth discrepancy in the notice dated 09.01.2024 are identical, resulting in an overlap. This duplication, along with the issuance of multiple overlapping notices, raises concerns regarding the respondent's non-application of mind. Furthermore, the petitioner did not file a reply to the show cause notice dated 09.01.2024 due to the confusion caused by repeated allegations and the complexity of the ongoing proceedings. The situation was aggravated by the fact that some notices, including the one dated 09.01.2024, were uploaded solely on the GST portal without direct communication, making it difficult for the petitioner to be

timely aware of the proceedings. While the petitioner had filed an appeal against the impugned order dated 30.04.2024, which culminated from the initial show cause notice dated 15.12.2022, the subsequent *ex parte* proceedings deprived the petitioner of a fair opportunity to present their case. Hence, this Court is of the opinion that the order under Section 73, dated 30.04.2024 in Reference No.ZD3304242560010 was passed without considering these circumstances, and an ex parte order was issued without affording the petitioner an adequate opportunity to respond or be heard. As a result, the impugned order was passed in clear violation of the principles of natural justice. It is also important to recollect the submission of the learned senior counsel for the petitioner that the petitioner would be able to establish their case if an opportunity is provided and they would also pay the amount as fixed by this Court to the respondent.

8. In view of the above, it is just and proper to set aside the impugned order and direct the respondent to provide the petitioner an opportunity to file a reply/objection along with supporting documents.

9. Accordingly, the Court passes the following order:

(i) The impugned order in Reference No.ZD3304242560010, dated 30.04.2024 is set aside, and the matter is remanded to the respondent for fresh consideration, on the condition that the petitioner pays a sum of Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs only) to the respondent within four weeks from the date of receipt of a copy of this order. The setting aside of the impugned order shall take effect only upon payment of the said amount.

(ii) The petitioner shall file their reply/objection, along with the required documents, if any, within two weeks after making the payment.

(iii) Upon the filing of such reply/objection, the respondent shall issue a notice providing a clear 14-day period for a personal hearing. After conducting the hearing, the respondent shall pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

10. This writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

11.09.2024

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

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To

The Assistant Commissioner (ST) (FAC),
Saravanampatti Assessment Circle,
Commercial Taxes Office Building,
Dr.Balasundaram Road,
Coimbatore - 641 018.

KRISHNAN RAMASAMY.J.,
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