IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.26276 & 26279 of 2024
and
W.M.P.Nos.28702, 28703, 28704 & 28706 & of 2024

M/s.TKT Motors,
Rep., by its Partner,
Sri.S.Nandakumar,
No.514 & 515, Kamaraj Road,
Tirupur.

...Petitioner in both W.P's

Vs.

The Assistant Commissioner (ST)(FAC),
South Assessment Circle,
Ground Floor, Emperor Building,
No.16, Indira Nagar 1st Street,
Avinashi Road, Tiruppur 641 603.

... Respondent in W.P.No.26276 of 2024

The State Tax Officer,
South Assessment Circle,
Ground Floor, Emperor Building,
No.16, Indira Nagar 1st Street,
Avinashi Road, Tiruppur 641 603.

.... Respondent in W.P.No.26279 of 2024

Prayer in W.P.No.26276 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent in GSTIN:33AADFT5859R1ZD/ 2018-19 and quash the proceeding dated 18.03.2024 passed therein.

Prayer in W.P.No.26279 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent in GSTIN:33AADFT5859R1ZD/ 2018-19 and quash the proceeding dated 08.04.2024 passed therein.

Appearance in both W.P's

For Petitioner : Mr.B.Raveendran

For Respondents : Mrs.K.Vasanthamala
Government Advocate (Taxes)

COMMON ORDER

Since the issue involved and the relief sought in both the Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. Challenging the impugned orders dated 18.03.2024 & 08.04.2024 passed by the Assistant Commissioner (ST)(FAC) & The State Tax Officer, the petitioner has filed the present Writ Petitions.

3. The learned counsel for the petitioner submitted that a show cause dated 19.12.2023 was uploaded on the petitioner's GST portal, alleging that there is a difference in the tax liability for the assessment year 2018-2019. Due

to the non-filing of returns for a continuous period of six months, the respondent cancelled the GST registration of the petitioner on 24.09.2020 with effect from 01.08.2019. Since the petitioner has not carried on any business activities, it had no occasion to gone through or use the GST portal. Due to the non-filing of reply to the said show cause notice dated 19.12.2023, the respondent/Assistant Commission passed an order dated 18.03.2024, which is impugned in W.P.No.26276 of 2024.

3.1. The learned counsel for the petitioner would further submit that for the identical set of issues for the same assessment year, the respondent has issued one more show cause on 27.12.2023 and the same was uploaded in the GST portal, alleging that there are defects in the returns filed by the petitioner for the same assessment year i.e., 2018-2019. As the petitioner was unaware of the said notice, it failed to respond the same, which led the respondent passing the order dated 08.04.2024, which is impugned in W.P.No.26279 of 2024. The first and foremost contention of the petitioner is that without providing any opportunity of personal hearing the impugned orders dated 18.03.2024 & 08.04.2024 came to be passed by the respondent. Further, he submitted that even impugned orders were uploaded in the GST portal and the physical version of such orders were not served on the petitioner. The petitioner came to know about the impugned proceedings only when the recovery notice was issued by the respondent on 16.08.2024. Hence, he submitted that both the impugned orders are laible to be set-aside.

4. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) appearing for the respondents submitted that two show cause notices were issued and the second show cause notice was issued only with minor variations. As the petitioner failed to respond the said show cause notices, the impugned orders came to be passed by the respondents. Futher, she suggest that the order dated 18.03.2024, which is impugned in W.P.No.26276 of 2024 may be quashed and the another order dated 08.04.2024, which is impugned in W.P.No.26279 of 2024 may be remanded back to the Authority concerned for fresh consideration and for passing orders.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents and also perused the materials available on record.

6. Upon persual of the records, it shows that two show cause notices were issued for the same assessment year viz., 2018-2019 and two impugned orders were passed on the identical issues. As contented by the learned counsel for the petitioner, the present impugned orders came to be passed by the respondents, without providing any opportunity of personal hearing. It is an admitted fact that the petitioner has not carried on any business activities at the relevant point of time. Since the said show cause notices were uploaded in the GST portal, the petitioner had no occasion to view the same, due the reason, that the petitioner's GST registration was cancelled with effect from 01.08.2019. It appears that the respondents proceeded to pass both the orders *exparte* for the identical issue with slight variations. Hence, this Court is inclined to quash the impugned order dated 18.03.2024. Accordingly, the impugned order dated 18.03.2024, which is the subject matter in W.P.No.26276 of 2024 is quashed.

7. The impugned order dated 08.04.2024 is liable to be set-aside for the reason that the same has been passed without providing any opportunity of personal hearing to the petitioner. Accordingly, the impugned order dated 08.04.2024 is set-aside with the following directions:

(i) The order impugned dated 08.04.2024 in W.P.No.26279 of 2024 is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks from the date of receipt of a copy of this order.

(iii) On receipt of such reply/objection by the petitioner, the respondent shall consider the same and pass appropriate orders on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner, as expeditiously as possible.

(iv) Considering the fact that the impugned orders itself are set aside, this Court is of the opinion that the recovery notice dated 16.08.2024 cannot survive any longer and hence, it is ordered to be lifted.

8. In the result, the W.P.No.26276 of 2024 is allowed; and W.P.No.26279 of 2024 is disposed of in the terms as stated in para no.7. No costs. Consequently, the connected miscellaneous petitions are closed.

10.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
1. The Assistant Commissioner (ST)(FAC),
South Assessment Circle,
Ground Floor, Emperor Building,
No.16, Indira Nagar 1st Street,
Avinashi Road, Tiruppur 641 603.

2. The State Tax Officer,
South Assessment Circle,
Ground Floor, Emperor Building,
No.16, Indira Nagar 1st Street,
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Krishnan Ramasamy,J.,
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