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

W.P.No.26931 of 2024
and
W.M.P.Nos.29446 & 29448 of 2024

Tvl. K.M.R. Constructions,
rep. By its Proprietor K.Mohan Raj
No.37, Arunachalam Street,
Chintadripet, Chennai – 600 002. ...Petitioner

Vs.

The Commercial Tax Officer,
Chindatripet Central III Assessment Circle,
Chennai, Central
A-104,1st Floor, PAPJM Annex Building,
Greams Road, Chennai – 600 006. ...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 Order of Assessment in DRC-07 bearing Reference No ZD330424224006Y in GSTIN : 33AKEPM6474GIZ3 / 2018-19 dated 27.04.2024 issued by the respondent and to quash the same.

For Petitioner : Mr.R.Ganesh Kanna

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

Order

With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the Order of Assessment in DRC-07 dated 27.04.2024 issued by the respondent and to quash the same.

3. Mr.R.Ganesh Kanna, learned counsel for the petitioner would submit that the petitioner has been issued with a show cause notice on 27.12.2023, to which, the petitioner filed the reply on 26.02.2024, which was uploaded through the on line portal on 28.03.2023, however, the respondent, without considering the said reply, passed the impugned order on 27.04.2024, without even affording an opportunity of personal hearing to the petitioner, which is in violation of principles of natural justice and is liable to be aside. However, the learned counsel fairly submits 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.C.Harsha Raj, the learned Additional Government Pleader (T) who takes notice on behalf of the respondent though initially sought time to get instructions as to whether the petitioner was afforded with an opportunity of personal hearing before passing the impugned order, in response to the submission made by the petitioner which is to the effect that petitioner is ready and willing to deposit 10% of the disputed tax, stated that 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. On perusal of records, it is seen that, the respondent passed the impugned order dated 27.04.2024 after considering the reply filed by the petitioner dated 26.02.2024, which was uploaded through the on line portal on 28.03.2024, however, considering the fact that no opportunity of personal hearing was afforded to the petitioner before passing the impugned order, this Court is of the view that the impugned order suffers from violation of principles of natural justice and has to be set aside, as any such order came to be passed against an Assessee (petitioner in this case) without providing any opportunity of personal hearing is unsustainable in the eye of law.

7. In the light of the above, this Court is inclined to pass the following orders;-

i) The impugned order dated 27.04.2024 passed by the respondent is set aside.

ii) The matter is remanded back to the respondent for fresh consideration.

iii) 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 (as agreed by the petitioner) within a period of four weeks from the date of receipt of a copy of this order. In the event, the petitioner intends to file any additional reply, the same filed by the petitioner within the said period.

iv) Upon payment of 10% of the disputed tax, the respondent is directed to consider the additional reply, if any, filed by the petitioner and shall provide a personal opportunity of hearing by issuing 21 days clear notice and after hearing the petitioner in full, shall pass necessary orders in accordance with law.

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

11.09.2024

sd
Index : yes/no
Neutral Citation : yes/no

To

The Commercial Tax Officer,
Chindatripet Central III Assessment Circle,
Chennai, Central
A-104,1st Floor, PAPJM Annex Building,
Greams Road, Chennai – 600 006.

Krishnan Ramasamy,J.,

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