IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.11.2024

CORAM

THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.P.No. 27338 of 2024
and
WMP.No. 29826, 29830 & 29832 of 2024

M/s. Malathy Constructions
Represented by Managing Partner
D.No. 25/5/301,
Sanjay Gandhi Nagar,
Nellore City,
Andhra Pradesh – 524 004. ... Petitioner

Vs.

1.The Deputy State Tax Officer-2
Kallakurichi
No.33, Nepal Street
Kallakurichi
Tamil Nadu.

2.The Deputy State Tax Officer (GST Inspector)
Integrated Commercial Tax Building
No. 33, Nepal Street
Kallakurichi
Tamil Nadu.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Order No. 33ABBFM7082QIZR/2018-19 dated 23.04.2024 passed under Section 73 of the CGST Act, 2017 issued by the 1st respondent and the consequential recovery notice in Form GST DRC 01D bearing Ref.No. ZD3304241925394 dated 15.07.2024 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.H.S. Hredai

For Respondents : Mr.T.N.C.Kaushik,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 23.04.2024 passed by the 1st respondent.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that all notices/communications were uploaded by the respondent under the column, viz., "View Additional Notices and Orders", in the GST portal. Since the petitioner was not aware of the said notices, they failed to file their reply within the time. Under these circumstances, the impugned order came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner. Hence, this petition has been filed.

4. On the other hand, the learned Additional Government Pleader appearing for the respondent would submit that the respondent has uploaded the notices in the GST Online Portal. But the petitioner failed to avail the said opportunity. Further, he has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, he requested this Court to remit the matter back to the respondent, subject to the payment of 10% of the disputed amount by the petitioner.

5. In reply, the learned counsel for the petitioner would submit that the respondent has already recovered the entire tax amount vide bank attachment.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and also perused the materials available on record.

7. In the present case, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order was passed in violation of principles of natural justice since it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. Further, it was submitted by the petitioner that the entire tax amount was already recovered by the respondent vide bank attachment. In such view of the matter, this Court is inclined to set aside the impugned order dated 23.04.2024 passed by the 1st respondent.

Accordingly, this Court passes the following order:-

(i) The impugned order dated 23.04.2024 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 three weeks from the date of receipt of copy of this order.

(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.

(iv) Considering the fact that the impugned orders itself have 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. As a sequel, the respondent is directed to instruct the concerned bank to release the attachment and de-freeze the bank account of the petitioner, immediately upon verifying with regard to the recovery of tax amount as submitted by the petitioner.

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

12.11.2024

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

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Tamil Nadu.

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MOHAMMED SHAFFIQ, J

MSM

To

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