IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28076 of 2024
W.M.P.Nos.30627 & 30629 of 2024

M/s.JP Industries,
Represented by its Sole Proprietor
D.Vajarampatel
S/o. Dhanaramchoudary
199, Theerthagiri Kottai,
Cinnapanamutlu Village,
Krishnagiri District – 635 203 ...Petitioner

Vs

The Assistant Commissioner (ST)
Krishnagiri - II Assessment Circle,
Ground Floor, Commercial Taxes Building,
Kallakuruki, Krishnagiri ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the Respondent herein in GSTIN/33AEAPV0497E1ZK/2017-18 dated 28.06.2024 and quash the same.

For Petitioner : Mr.N.Chandirasekar

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

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorari to call for the records of the respondent relating to the impugned order dated 28.06.2024 proceedings in GSTIN/33AEAPV0497E1ZK/2017-18 and quash the same as illegal.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Tax), takes notice on behalf of the respondent.

3.By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4.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 Auditor of the petitioner was not aware of the said notices, they failed to file their reply within time. Even the personal hearing notices were uploaded in the said column, there are not in a position to file the reply or appear for personal hearing. He further submits that the impugned order passed by the respondent is expired by limitation. Inasmuch as time limit to pass the order invoking Section 74 of TNGST Act, for the year 2017-2018 has expired on 31.12.2023. He would also submit that initially the time limit to pass the orders imposing demand is fixed. The ingredients of Section 74 were not made in the impugned order, since, the order does not contain any allegations to substantiate that turn over involved as evaded tax due to fraud, suppression and mis-statement. The learned counsel submits that imposition of penalty under Section 74 and interest under Section 50 of the CGST and TN GST is arbitrary and the same cannot be sustained and also violated the principles of natural justice since the impugned order came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner. Hence, the learned counsel sought for setting aside the impugned order.

5. The learned counsel for the petitioner would also submit that if an opportunity is provided and the petitioner, they would be able to

substantiate their case and he would submit that the petitioner is ready and willing to make a payment of 10% of the disputed tax demanded in the impugned order.

6.The learned counsel for the respondent would submit that on the aspect of the issue of limitation is concerned, the present case show cause notice was issued under Section 74 of the Act. As regards the issue of uploading of the notice in GST Portal is concerned, he would submit that the notices and impugned order were uploaded in the column, viz., "View Additional Notices and Orders" in the GST portal and it is for the petitioner to verify and respond to the same. However, taking into consideration of the circumstances, if this Court remands the matter for fresh consideration by providing an opportunity to the petitioner, the same may be directed subject to terms.

7.I have given my anxious consideration to the submissions made by the learned counsel for the petitioner and the learned Government

Advocate (Taxes) for the respondent and perused the entire materials available on record.

8.As regards the issue of the limitation is concerned, since the impugned notices have been issued under Section 74 in Form GST DRC-01A dated 18.07.2023 for the Assessment Year 2017-18 which is well within the time limit and the same have not been expired.

9. As far as uploading of notices in the Column, i.e. “View Additional Notices and Orders" in the GST portal is concerned, in general, the Department used to upload notices and impugned orders in different columns and according to the petitioner, they had no occasion to view the same and respond to it. The reason assigned by the petitioner appears to be convincing and this Court is of the view that the impugned order came to be passed without affording opportunity of personal hearing to the petitioner to establish their case, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

10. For the reasons stated above, this Court is inclined to set aside the impugned order dated 28.06.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside on condition that the petitioner deposits 10% of the disputed tax amount in respect of the impugned assessment period within a period of three weeks from the date of receipt of a copy of this order.

(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 remittance of above 10% of the disputed tax to the respondent.

(iii) Considering the fact that the impugned order itself has 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. The respondent is directed to instruct the Bank to unfreeze the Bank account of the petitioner immediately upon the production of a copy of this order.

(iv) 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.

11. With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

26.09.2024

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

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To
The Assistant Commissioner (ST)
Krishnagiri - II Assessment Circle,
Ground Floor, Commercial Taxes Building,
Kallakuruki, Krishnagiri

KRISHNAN RAMASAMY.J.,

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