IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.27292 of 2024 &
W.M.P.Nos.29792 & 29794 of 2024

Tvl.B.S.Construction,
(Represented by its Proprietor,
Mr.Binda Sah),
354, 2nd Street, Athipattu Pudu Nagar,
Athipattu, Tiruvallur,
Tamil Nadu - 600 120. ... Petitioner

Vs.

The State Tax Officer,
Cholavaram Assessment Circle,
Room No.108, 1st Floor,
Integrated C.T.Buildings,
Chennai - 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in his proceeding in Form GST DRC-07 with Reference No.ZD331223246242X, dated 28.12.2023 along with detailed order GSTIN:33AXJPS5140B1ZR/2017-18, dated 28.12.2023 for the assessment period 2017-18 and quash the same.

For Petitioner : Mr.B.Syed Abdul Wakeel
For Mr.N.Chandirasekar

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

ORDER

The petitioner has filed this writ petition challenging the assessment order dated 28.12.2023 relating to the period 2017-18.

2. The learned counsel for the petitioner submits that the respondent issued an ASMT-10 notice dated 03.07.2023, indicating a mismatch between the amounts in FORM 26AS and FORM GSTR-1, which comes to Rs.69 lakhs. This was followed by a show cause notice in FORM DRC-01, dated 15.09.2023. The petitioner was given a month's time to respond to the show cause notice, with the due date being 14.10.2023. However, no specific date or time for personal hearing was mentioned in the show cause notice. While so, the petitioner’s GST registration was cancelled on 10.10.2023, with effect from 08.08.2023, leaving them to unable to respond to the show cause notice within the due date. Thereafter, the respondent passed the impugned order on 28.12.2023. The learned counsel would further submit that the petitioner subsequently filed an application on 27.06.2024 for revocation of

the cancellation of the registration, which was revoked on 19.07.2024. The learned counsel would also submit that the petitioner discovered the impugned order dated 28.12.2023 only in the third week of July under the "Additional Notices and Orders" section on the GST Portal. Thus, according to the learned counsel, due to the cancellation of the GST registration, the petitioner could not respond to the show cause notice and hence, the order passed by the respondent which is impugned herein, is arbitrary, illegal and in violation of the principles of natural justice.

3. Per contra, the learned Government Advocate (Taxes) representing the respondent submits that even if the registration was cancelled, there is no prohibition for the petitioner from uploading responses to the portal. Therefore, the petitioner’s claim of inability to respond is unfounded.

4. In reply, the petitioner’s counsel submits that the petitioner under the impression that they could not upload the response due to cancellation of registration on 10.10.2023, have not sent their reply to the show cause notice.

5. Heard both sides and perused the documents enclosed in the typed set of papers.

6. It is undisputed that the impugned order dated 28.12.2023 was passed, while the petitioner's GST registration was inactive due to its cancellation. Though the learned Government Advocate appearing for the respondent contends that the petitioner could still upload documents despite the cancellation, the petitioner under the impression that they could not respond due to the registration being cancelled on 10.10.2023, failed to reply to the show cause notice. In the considered opinion of this court, the reason assigned by the petitioner appears to be genuine. Furthermore, the petitioner has settled the entire GST liability with no outstanding amount for Tamil Nadu. The show cause notice dated 15.09.2023 related to the turnover Pan India. Since the petitioner had already paid the required amount for Tamil Nadu, there is no additional liability for them. In such circumstances, this court finds that the petitioner's failure to respond to the notice seems to be genuine. Therefore, the order passed by respondent without giving opportunity to the petitioner to submit their reply to the show cause notice, is arbitrary and in violation of the principles of natural justice and is liable to be set aside.

6. Accordingly, the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. The petitioner shall file their reply/objection along with the required documents, if any, to the respondent within a period of two weeks from the date of receipt of a copy of

this order. On filing of such reply/objection by the petitioner, the respondent shall consider the same after issuing a 14 days clear notice by fixing the date of personal hearing and thereafter pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

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

12.09.2024

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

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To

The State Tax Officer,
Cholavaram Assessment Circle,
Room No.108, 1st Floor,
Integrated C.T.Buildings,
Chennai - 600 003.

KRISHNAN RAMASAMY.J.,
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