IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.09.2024

Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.28309 of 2024
and
W.M.P.Nos.30855 & 30856 of 2024

ZAMA & CO.
rep. by its Partner Mr.Zubair Ahmed Kondalam. ...Petitioner

Vs.

The Deputy State Tax Officer,
(Formerly Known as Deputy Commercial Tax Officer)
Vepery, North – III Chennai North,
A-110, CT Annexe Building, 1st Floor,
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 Certiorarified Mandamus to call for records relating to the impugned order in Reference No. ZD3304241769940/2018-19 dated 23.04.2024 passed by the Respondent and the consequential rejection orders bearing Reference No. ZD330524063962B/2018-19 dated 10.05.2024 and ZD330824246036H/2018-19 dated. 27.08.2024 passed by the respondent and quash the same.

For Petitioner : Mr.S.Ramanan

For Respondent : Mr.G.Nanmaran
Special 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 dated 23.04.2024 passed by the respondent and the consequential rejection orders dated 10.05.2024 and 27.08.2024 respectively passed by the respondent and to quash the same.

3. Mr.S.Ramanan, learned counsel for the petitioner would submit that on receipt of the Form DRC-01 notice, the petitioner could not file reply immediately due to the reason that the Authorized Person, who is taking care of the statutory compliance was not well, therefore, the failure on the part of the petitioner in giving reply was neither wilful nor wanton, but, in the interregnum, the respondent passed the impugned orders. The learned counsel further submitted that the transaction in dispute was already rectified/reversed by the petitioner during the monthly returns filed for the subsequent months, hence, the petitioner filed Applications dated 04.05.2024 and 12.07.2024 setting out such details along with relevant documents, and sought for rectification, however, the respondent rejected the Applications by virtue of the impugned orders dated 10.05.2024 and 27.08.2024 respectively. Hence, the petitioner is constrained to approach this Court seeking for appropriate relief.

3.1 Therefore, the learned counsel would submit that the impugned orders suffers from violation of principles of natural justice as the petitioner has not been heard before passing such orders.

4. Mr.G.Nanmaran, the learned Special Government Pleader (T) for the respondent justified the impugned orders passed by the respondent by contending that initially the petitioner has been issued with Form DRC-01 dated 27.12.2023, pointing out certain discrepancies, which was followed by three reminders, despite the same, the petitioner has not come forward to give reply nor appeared on the date fixed for personal hearing, hence, the impugned orders came to be passed against the petitioner. Hence, the impugned orders calls for no interference.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. The petitioner is an assessee on the files of the respondent. For the tax period April, 2018 to March, 2019, the respondent issued a notice in DRC-01 dated 27.12.2023 on the ground that the petitioner has availed excess ITC. Unfortunately, the petitioner could not file reply immediately to such notice, owing to the fact that the petitioner's Authorized Person, who is taking care of the statutory compliance was not well. However, the excess ITC availed by the petitioner was already rectified/reversed by the petitioner during the monthly returns filed in the subsequent months and to the extent GSTR-3B was also filed, however, the respondent, without considering the said aspect, as if, the petitioner has availed ITC in entirety, passed the impugned orders towards tax liability as well as equivalent amount towards penalty/interest. Though the petitioner filed Applications dated 04.05.2024 and 12.07.2024 setting out such details along with relevant documents and sought for rectification, the respondent, without any application of mind, rejected the Applications by virtue of the impugned orders dated 10.05.2024 and 27.08.2024 respectively. Therefore, this Court is of the view that the impugned orders are nothing but an outcome of total non application of mind and also suffer from violation of principles of natural justice, as the petitioner has not been heard before passing such orders. Hence, this Court is inclined to set aside the same.

6.1 Accordingly, this Court passes the following orders/directions:-

i) The impugned orders dated 23.04.2024 as well as the Rejection Orders dated 10.05.2024 and 27.08.2024 respectively are set aside.

ii) Consequently, the matters are remanded to the respondent for fresh consideration.

iii) The petitioner is directed to file reply along with supportive documents within a period of three weeks from the date of receipt of a certified copy of this order.

iv) Thereupon, the respondent is directed to consider the same and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner, and after hearing the petitioner in full, shall decide the matter in accordance with law.

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

30.09.2024

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Index : yes/no
Neutral Citation : yes/no

To

The Deputy State Tax Officer,
(Formerly Known as Deputy Commercial Tax Officer)

Vepery, North – III Chennai North,
A-110, CT Annexe Building, 1st Floor,
Greams Road, Chennai – 600 006.

Krishnan Ramasamy,J.,

sd

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