IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.28174 of 2024
and W.M.P.Nos. 30720 and 30721 of 2024

TVL R.D.Creation
Rep. by its Proprietor
Durga Devi Dangra,
A-13, Door No.19,
Old No.10, Rukmani and Ramiah Complex
Bunder Street,
Chennai – 600 001 .... Petitioner

Vs.

1.The Assistant Commissioner (St)
Kothawalchavadi Assessment Circle
Integrated Building for Commercial Taxes,
No.32, Elephant Gate Bridge Road,
(Off Wall Tax Road)
Vepery, Chennai – 600 003.

2.The Deputy Commercial Tax Officer,
Kotthavalchavadi Assessment Circle,
Integrated Building for Commercial Taxes,
No.32, Elephant Gate Bridge Road,
(Off Wall Tax Road)
Vepery, Chennai – 600 003 ... Respondents

Prayer:- Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records in connection with the order passed by the 2nd respondent in GSTIN/ID:33ADRPD2880K1ZB 2018-2019 in Reference No.ZD330723134408H dated 31.07.2023 and quash the same as illegal and improper.

For Petitioner : Mr.Kingston Jerold

For Respondents : Mr.V.Prashanth Miran
Government Advocate (Tax)

***

ORDER

This writ petition has been filed challenging the impugned order 31.07.2023 passed by the 2nd respondent.

2. Mr.V.Prashanth Kiran, learned Government Advocate(T) takes notice on behalf of the respondents. 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 submits that while filing returns, due to oversight, inadvertently error occurred and the respondents have not provided the required document to find out the error on which invoice, non-payment error can be rectified by the petitioner. Therefore, without providing an opportunity to rectify the error, impugned notice dated 31.07.2023 was uploaded in the GST portal. Hence, the petitioner was not able to defend the case and the petitioner's bank account was also

freezed. However, without affording any opportunity to send reply and for personal hearing, the impugned order came to be passed on 31.07.2023. Therefore, the order passed by the 2nd respondent is in violation of principles of natural justice. He further submitted that the petitioner is willing to deposit 10% of the disputed tax amount and hence, the order passed by the respondents may be set aside and remanded the matter back to the respondents for reconsideration.

4. On the other hand, the learned Government Advocate(T) appearing for the respondents would submit that though the impugned order was served to the petitioner, he failed to file the reply within the prescribed time limit. However, he would fairly submit that if any order is passed by this Court, the same will be complied with by the respondents.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (T) for the respondents and perused the materials placed before this Court.

6. On perusal of the impugned order, this Court is of the view that no order can be passed without providing sufficient opportunities to the petitioner. However, in the present case, without providing opportunity for personal hearing, the 2nd respondent passed the present impugned order.

Hence, the impugned order is liable to be set aside.

7. Accordingly, the impugned order dated 31.07.2023 is set aside and remanded the matter back to the respondents on condition that the petitioner shall deposit 10% of the disputed tax demand to the respondents, within a period of four (4) weeks from the date of receipt of a copy of this order and thereafter, the petitioner is directed to file a reply within a period of two (2) weeks. After receipt of the reply, the authorities concerned shall fix a date for personal hearing by sending a physical notice to the petitioner and thereafter, pass orders on merits and in accordance with law.

8. 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. As a sequel, the respondents are directed to instruct the concerned bank to release the attachment and de-freeze the cash credit account of the petitioner, immediately upon the production of a copy of this order.

9. With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

27.09.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
msv

To
1.The Assistant Commissioner (St)
Kothawalchavadi Assessment Circle
Integrated Building for Commercial Taxes,
No.32, Elephant Gate Bridge Road,
(Off Wall Tax Road)
Vepery, Chennai – 600 003.

2.The Deputy Commercial Tax Officer,
Kotthavalchavadi Assessment Circle,
Integrated Building for Commercial Taxes,
No.32, Elephant Gate Bridge Road,
(Off Wall Tax Road)
Vepery, Chennai – 600 003

KRISHNAN RAMASAMY, J.

msv

WP.No.28174 of 2024
and W.M.P.Nos.30720 and 30721 of 2024

27.09.2024