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.28135 of 2024
W.M.P.Nos.30684 & 30685 of 2024

M/s Arima Exim Private Limited
Represented by its Director
Mr.Palanisamy Veeraviswamithiran
14/1 Park Centre 3B Venkatanarayana Road
Thyagaraya Nagar, Chennai
Tamil Nadu – 600 017. ...Petitioner

Vs

The Assistant Commissioner (ST)
Nandanam Assessment Circle,
No.46, III Floor, Greenways Road,
Chennai, Tamil Nadu, 600 028. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records leading to the issuance of Impugned Order reference No.ZD330424178344F dated 23-04-2024 FORM DRC-07 along with connected proceedings GSTIN No.33AAJCA1046Q3ZH/2018-2019 dated 23-04-2024 by the Respondent herein and quash the same and direct the Respondent to consider the matter afresh after giving full and fair opportunity to the Petitioner to submit its reply and after affording opportunity of personal hearing to the Petitioner.

For Petitioner : Mr.Prakash T C

For Respondent : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent relating to the impugned order dated 23.04.2024 proceedings in 33AAJCA1046Q3ZH/2018-2019 dated 23-04-2024 and quash the same as illegal.

2. Mrs.K.Vasanthamala, 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.Alleging that there is a ITC differences noticed between GSTR-1, GSTR-2A Vs GSTR-3B and GSTR-9 of Tamil Nadu Goods and Service Tax Rules, 2017, Form filed by the petitioner for the financial year 2018-2019, the respondent has issued show cause notice under Section 73 of Tamil Nadu Goods and Services Tax Act in DRC-01 dated 29.12.2023, and also sent a reminders to the petitioner dated 09.02.2024, 06.04.2024 and 09.04.2024 respectively. However, the petitioner was not aware of the communications sent through GST common portal, since it was handled by his tax consultant. As the said show cause notice was not noticed by the petitioner, it was uploaded in different column. Hence, the petitioner failed to respond to the same. Thereafter, the respondent passed an impugned order dated 23.04.2024 confirming the levy of tax and penalty as proposed in the show cause notice dated 29.12.2023. Purusant to the impugned order, the petitioner-company Bank account has been freezed. Aggrieved by the same, the petitioner has filed the present Writ Petition.

5.The learned counsel for the petitioner submitted that, if an opportunity is provided and the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

6. The learned Government Advocate appearing for the respondent would submit that subject to the deposit of 10% of the disputed tax demand by the petitioner in respect of the impugned assessment period, this Court can consider and pass appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent and perused the materials available on record.

8. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned show cause notice was issued through the GST Portal Tab. According to the petitioner, the petitioner was not aware of the issuance

of the show cause notice issued through the GST Portal and the original of the said show cause notice was not furnished to them. In such circumstances, 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.

9. For the reasons stated above, this Court is inclined to set aside the impugned order dated 23.04.2024 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.

10. 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)
Nandanam Assessment Circle,
No.46, III Floor, Greenways Road,
Chennai, Tamil Nadu, 600 028.

KRISHNAN RAMASAMY.J.,

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