IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.27875 of 2024
& W.M.P.No.30397 of 2024

M/s.Poomalai Housing (P) Ltd.,
Rep by its Managing Director,
V.Murugan,
409, Vel's Poomalai,
6th East Street, Kamaraj Nagar,
Thiruvanmiyur, Chennai 600 041.

... Petitioner

Vs.

The Additional Commissioner,
Office of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No.692,
5th Floor, Anna Salai,
Nandanam, Chennai 600 035.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Order-in-Original No.28/2023-GST-ADC dated 31.05.2023 and quash the same an consequently, direct the respondent to give an opportunity of personal hearing.

For Petitioner : Mr.P.R.Kumar

For Respondent : Mr.M.Santhanaraman,
Senior Standing counsel

ORDER

This writ petition has been filed challenging the impugned order dated 31.05.2023 passed by the respondent.

2. Mr.M.Santhanaraman, learned Senior Standing counsel, takes notice on behalf of the respondent. 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 would submit that at the time of issuance of show cause notice dated 05.04.2022, a staff of the petitioner-company, who was looking after the GST matters, had

suddenly left the company. Therefore, the petitioner, being unaware of the said show cause notice, had failed to file their reply in time. Under the circumstances, the ex parte impugned order came to be passed by the respondent on 31.05.2023. Hence, he requests this Court to pass appropriate orders and grant one more opportunity to the petitioner to present their case before the respondent.

4. On the other hand, the learned Senior Standing counsel appearing for the respondent had strongly opposed for entertaining the present petition and submitted that even before the issuance of show cause notice, the petitioner had participated in the investigating proceedings, where all the summons were served to the petitioner including the aforesaid show cause notice dated 05.04.2022. The said aspect was also mentioned in the affidavit filed by the petitioner. When such being the case, it is the duty of the petitioner to file their reply by engaging other GST Consultant and hence, the reason assigned by the petitioner for non-filing of reply is not acceptable. However, in this case, the petitioner had neither engaged other GST Consultant nor took any

steps to file their reply. Under the circumstances, the impugned order came to be passed by the respondent on 31.05.2023. Even after the passing of said impugned order, the petitioner had not taken any steps to challenge the same by way of appeal before concerned Appellate Authority. Hence, he requests this Court to dismiss the present petition.

5. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondent and also perused the materials available on record.

6. In the case on hand, it is an admitted fact that the petitioner had already participated in the investigation proceedings, whereby all the summons, including the show cause notice dated 05.04.2022, were issued by the respondent and the same was also stated in the affidavit filed by the petitioner. According to the petitioner, one of the staffs, who was looking after the GST matters, has suddenly left the company, due to which, they were not in a position to file their reply in time.

7. Normally, if an employee, who was entrusted with the GST matters, left the Company, it is the duty of the said company to engage other Consultant for dealing with the GST matters. When such being the case, the reason assigned by the petitioner does not appear to be genuine. Therefore, it is clear that the petitioner themselves had given up their rights for personal hearing and filing of reply in the present case. However, normally, an Assessee will have two opportunities to present their case on factual aspects. One is before the Assessing Officer and another is before the Appellate Authority. The Appellate Authority will also have similar power of the Assessing Officer to adjudicate the petitioner's case.

8. In this case, the petitioner himself had voluntarily given up the rights of filing the reply and personal hearing before the Assessing Officer. Hence, once a person had given up his rights, he cannot claim it back as he lost his opportunity. In such situation, he has to avail the second opportunity to present their case before the Appellate Authority. Therefore, this Court is inclined to grant liberty to the petitioner to file

an appeal before the concerned Appellate Authority.

9. For the reasons assigned above, this writ petition is dismissed. While dismissing the present petition, liberty is granted to the petitioner to file an appeal before the concerned Appellate Authority, subject to the payment of a sum of Rs.25,000/- to The Principal Government Naturopathy Medical College and Hospital, Account No.7883022723, IFSC Code: IDIB000M157.

10. The said amount shall be paid by the petitioner within a period of 2 weeks from the date of receipt of copy of this order. Thereafter, the petitioner shall file their appeal before the concerned Appellate Authority within a period of 3 weeks from the date of payment of aforesaid amount.

11. Upon production of proof with regard to the payment as stated

above, the concerned Appellate Authority shall consider and dispose of the appeal filed by the petitioner on its own merits and in accordance with law, by providing sufficient opportunity to the petitioner, without pressing for limitation. No costs. Consequently, the connected miscellaneous petition is also closed.

26.09.2024

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

To

The Additional Commissioner,
Office of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No.692,
5th Floor, Anna Salai,
Nandanam, Chennai 600 035.

KRISHNAN RAMASAMY.J.,

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