IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.27850 & 27854 of 2024
and
W.M.P.Nos.30359, 30360, 30361, 30365, 30366 & 30367 of 2024

Tvl.Standard Facility Services,
Represented by its Partner A.Srinivasan,
1/277, Flat A2, Shakthi Commune,
Maruthi Nagar, Kolapakkam,
Chennai-600 122, Tamil Nadu.

...Petitioner in both W.P's

Vs.

1. Deputy Commercial Tax Officer,
No.1275/3, Integrated Commercial Taxes
Building (North/Thiruvallur Division),
First Floor, Room No.124, Elephant Gate Bridge Road,
Vepery, Chennai-600 003.

.... Respondent No.1 in W.P.No.27854 of 2024

2. The Assistant Commissioner (ST) (FAC),
No.1275/3, Integrated Commercial Taxes
Building (North/Thiruvallur Division),
First Floor, Room No.124, Elephant Gate Bridge Road,
Vepery, Chennai-600 003.

3. The Branch Manager,
Karur Vysya Bank,
St. Thomas Hospital Defence Colony Road,
St. Thomas Mount, Chennai-600 016.

... Respondents Nos.2 & 3 in W.P.No.27854 of 2024
&
... Respondents Nos.1 & 2 in W.P.No.27850 of 2024

Prayer in W.P.27850/2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in the file of the Respondents and quash the impugned order under Section 73 of Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 dated 29.04.2024 having Reference Number No.ZD330424237465H along with summary of the Order dated 29.04.2024 having Reference No.ZD330424237465H (Impugned Order) in GSTIN:33ABWFS9409E1ZQ for the year 2018-19 passed by the First Respondent and the consequential recovery Notice issued by the First Respondent to the Second Respondent in Form GSTR DRC-13 under Section 79 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 dated 03.09.2024 for the year 2018-19.

Prayer in W.P.27854/2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in the file of the Respondents and quash the impugned order under Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 dated 29.04.2024 having Reference Number No.ZD330424234361U along with Summary of the Order dated 29.04.2024 having Reference No.ZD330424234361U (Impugned Order) in GSTIN:

33ABWFS9409E1ZQ for the year 2018-19 passed by the First Respondent and the consequential recovery Notice issued by the First Respondent to the Second Respondent in Form GSTR DRC-13 under Section 79 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax, 2017 dated 03.09.2024 for the year 2018-19.

Appearance in both W.P's

For Petitioner : Mr.N.V.Balaji

For Respondents 1 & 2 : Mr.V.Prashanth Kiran
Government Advocate (Taxes)

COMMON ORDER

Since the issue involved and the relief sought in both the Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. Challenging the impugned orders dated 29.04.2024 & 03.09.2024 respectively passed by the first and second respondents, the petitioner had filed these Writ Petitions.

3. The learned counsel for the petitioner submitted that the petitioner is engaged in the business of providing house-keeping, security, catering and transportation services to educational institutions and also engaged in trading

textbooks and snacks items. It is stated that the first respondent issued a show cause notice in Form GST DRC-01 dated 14.08.2023, alleging that there are discrepancies in the returns filed by the petitioner for the financial year 2018-2019. The petitioner also filed a reply to the said show cause notice on 14.09.2023. Thereafter, the second respondent issued a summary show cause notice in Form DRC-01 dated 23.12.2023, by mentioning the date for personal hearing on 19.01.2024 at 11.30 a.m. The main contention of the learned counsel for the petitioner is that the said summary show cause notice was raised on the petitioner's GST common portal. Since the new consultant of the petitioner was unaware of the proceedings, the petitioner was unable to appear for personal hearing. Therefore, the first respondent passed an impugned order dated 29.04.2024, demanding the payment of Rs.17,86,484 & Rs.2,31,83,118/- respectively in respect of the impugned assessment period. Pursuant to which, an attachment order was passed by the second respondent vide order dated 03.09.2024, and a sum of Rs.1,30,00,000/- was debited from the petitioner's Bank account. Further, he submitted that though the impugned order was uploaded in the GST portal, the physical version of such order was not served on the petitioner. Hence, he sought for appropriate orders from this Court for affording an opportunity of personal hearing to the petitioner to present its case and participate in the proceedings.

4. Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) appearing for the respondents 1 and 2 though fairly admitted the receipt of the reply sent by the petitioner, he submitted that the petitioner had failed to appear for personal hearing, which led to the passing of the present impugned orders. Therefore, the reason assigned by the petitioner for non-appearance of personal hearing due to change in the new consultant is not acceptable. Hence, he submitted that appropriate orders may be passed by this Court.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) for respondents 1 & 2 and perused the materials available on record.

6. Considering the submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the petitioner had sent the reply on 14.09.2023 to the show cause notice in Form DRC-01 dated 14.08.2023. However, the petitioner had failed to appear for personal hearing, as the reminder notice and impugned orders were uploaded in the GST common

portal. According to the petitioner, the petitioner was not aware of the issuance of the reminder notice issued through the GST Portal and the original of the said notice was not furnished to them. In such circumstances, this Court is of the view that the impugned orders came to be passed without affording any opportunity of personal hearing to the petitioner to establish its 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.

7. For the reasons stated above and a sum of Rs.1,30,00,000/- was already debited from the petitioner's Bank account, this Court is inclined to set aside the impugned orders dated 29.04.2024 passed by the first and second respondents. Accordingly, this Court passes the following order:-

(i) The orders impugned herein are set aside and the matter is remanded to the first respondent for fresh consideration subject to the payment of Rs.5,000/- to the credit of **Cancer Institute (Regional Cancer Centre), Adyar, Chennai – 600 020** for delay in approaching this Court, within a period of one week from the date of receipt of a copy of this order.

(ii) Upon the production of a proof for the payment of the aforesaid amount, the first respondent is directed to issue a 14 days clear notice by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, within a period of three months thereafter, after hearing the petitioner.

(iii) Considering the fact that the impugned orders itself are 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 third respondent in W.P.No.27854 of 2024 is directed to defreeze the Bank account of the petitioner immediately upon the production of a copy of this order, in case the petitioner's Bank account is attached.

8. With the above directions, these Writ Petitions are disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

23.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,

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