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W.P.No.28035 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

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and

W.M.P.Nos.30586 & 30587 of 2024

Tvl.Arun Medicals,
Represented by its proprietor Kandappan Ganesan
GSTIN:33ALZPG3851H1ZT
No.74, Salem Main Road, Mecheri, Salem,
Tamil Nadu 636 453.

...Petitioner

Vs.

1. Assistant Commissioner (ST),
Mettur Assessment Circle, Salem II, Salem.
2. The Manager,
Indian Overseas Bank,
12-1/75, Dharmapuri Main Road,
Mecheri, Salem 636 453.

... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent relating to the impugned orders reference number ZD331223254738C dated 29.12.2023 along with the consequential GST DRC-13 dated 19.06.2024 Notice for attachment of Bank Account under section 79(1)(c) and quash the same as illegal arbitrary unconstitutional and direct the 2nd respondent to lift the Bank attachment to de-freeze the Bank Accounts of



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the petitioner relating the GST DRC -13 dated 19.06.2024 and further direct the 1st respondent to Re-do the assessment afresh by providing an opportunity of personal hearing as per provisions of CGST/TNGST Act 2017.

For Petitioner : Mr.S.Satheesh Kumar

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

ORDER

This Writ Petition has been filed challenging the impugned orders dated 29.12.2023 along with the consequential GST DRC-13 dated 19.06.2024 notice for attachment of Bank Account passed by the first respondent for the assessment year 2017-2018.

2. Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes), takes notice on behalf of the first respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. Alleging that there is a mismatch of tax liability between GSTR-3B and GSTR-2A filed by the petitioner for the assessment year 2017-2018, the respondent passed an impugned order dated 29.12.2023, demanding the



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payment of differential amount in respect of the impugned assessment period.

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5. The learned counsel for the petitioner submitted that a show cause notice raised on the petitioner in the GST common portal, stating that there is a mismatch of tax liability filed by the petitioner for the impugned assessment period. Since the petitioner's GST registration was cancelled, the petitioner had no occasion to go through the GST Portal. Hence, the petitioner failed to reply the said Show Cause Notice. He submitted that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner. When the petitioner intended to withdraw the money from his Bank Account, he came to know about the impugned order dated 29.12.2023 came to be passed by the first respondent. Hence, he sought for appropriate orders from this Court for affording an opportunity to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings. It is also submitted that, if an opportunity is provided, 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.



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6. Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes)

appearing for the first respondent submitted that subject to the payment of 10% of the disputed tax in respect of the impugned assessment period, this Court can remand the matter to the Authority concerned for passing appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader (Taxes) for the first 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 uploaded on the GST Portal Tab. According to the petitioner, the petitioner was unaware 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 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



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9. For the reasons stated above, this Court is inclined to set aside the impugned orders dated 29.12.2023 along with the consequential GST DRC-13 dated 19.06.2024 passed by the first respondent with the following directions:-

- (i) The orders impugned herein are set aside and the matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax in respect of the impugned assessment period within a period of four weeks from the date of receipt of a copy of this order; and the setting aside of the impugned order will take effect from the date of payment of the said amount.
- (ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.
- (iii) On filing of such reply/objection by the petitioner, the first respondent shall consider the same and 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, after hearing the petitioner, as expeditiously as possible.
- (iv) Considering the fact that the impugned orders 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



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longer and hence, it is lifted. The second respondent 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.

10. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

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