IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28373 of 2024 &
W.M.P.Nos.30937 and 30938 of 2024

Wattza Energy Private Limited,
Rep. by Director,
Mr.P.Ravichandran,
15, Vigneswar Street,
Ganesh Nagar, Guindy,
Chennai- 600032. ... Petitioner

Vs.

1. The Deputy State Tax Officer,
   Kodambakkam Assessment Circle,
   No.1, Greams Road, Annexure
   Building, 4th Floor,
   Chennai- 600 006.

2. The Branch Manager,
   Tahera Manor, Ground Floor &
   First Floor, Nungambakkam High
   Road, Chennai - 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned order vide FORM GST DRC07 bearing Reference Number

ZD330424216506O dated 26.04.2024 and the consequential impugned Recovery Notice passed by The Deputy State Tax Officer, the 1st Respondent herein, to quash the same.

For Petitioner : Mr.Shiva Kumar G

For Respondents : Mr.G.Nanmaran
Special Government Pleader (Taxes)

***

ORDER

This writ petition has been filed by the petitioner challenging the order of the 1st Respondent dated 26.04.2024 and to quash the same.

2. Mr.G.Nanmaran, learned Special Government Pleader (Taxes) 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. The learned counsel for the petitioner would submit that in the present case, show cause notice followed by three reminders were issued against the Petitioner and the same were uploaded in the "other notices"

tab in the GST Portal. Since the Petitioner being a small entity was not aware of the said notices and therefore they had failed to file their reply and appeared before the Respondent for personal hearing. Under these circumstances, the impugned order dated 26.04.2024 came to be passed by the Respondent demanding tax along with penalty and interest for the Assessment Year 2018-2019 and the same was also uploaded in the GST portal. Subsequently, the bank account of the Petitioner was also attached by the 1st Respondent. The Petitioner came to know of the impugned order only after receipt of the e-mail from the 2nd Respondent informing about the bank attachment.

5.Further, he would submit that impugned assessment order came to be passed without affording an opportunity of hearing to the Petitioner and therefore the same is in violation of principles of natural justice and therefore prays to set aside the same.

6. On the other hand, the learned Special Government Pleader (Taxes) appearing for the Respondent would submit that the respondent uploaded the show cause notice as well as the reminders in the GST

Online Portal. But the petitioner failed to submit reply and therefore the impugned order came to be passed.

7. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 10% of the disputed tax liability made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Special Government Pleader (Taxes) has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Special Government Pleader (Taxes) for the respondent and also perused the materials available on record.

9. In the present case, since the show cause notice followed by reminders were uploaded in the GST Portal, the petitioner was not aware of the same and therefore they were not in a position to file reply for the show cause notice.

10. Further, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order is passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 26.04.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 26.04.2024 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of disputed tax to the respondents 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 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.

(iv) 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 2nd respondent is directed to release the attachment on the bank account of the petitioner, immediately upon the production of proof with regard to the payment of 10% of the demand amount by the petitioner as stated above, along with a copy of this order.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

25.09.2024

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

To

1. The Deputy State Tax Officer,
   Kodambakkam Assessment Circle,
   No.1, Greams Road, Annexure
   Building, 4th Floor,
   Chennai- 600 006.

2. The Branch Manager,
   Tahera Manor, Ground Floor &
   First Floor, Nungambakkam High
   Road, Chennai - 600 034.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.28373 of 2024 &
W.M.P.Nos.30937 and 30938 of 2024

25.09.2024