IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.27927 of 2024
and
W.M.P.Nos.30460 & 30462 of 2024

EM TEE EN SWAMY & BROS.,
Represented by its Managing Partner,
Mr.M.Andalamma,
No.57/69, Devaraja Mudali Street,
Chennai 600 003. ...Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Moor Market Assessment Circle,
Integrated Building for Commercial Taxes
and Registration Department,
2nd Floor, Room No.226,
No.32, Elephant Bridge Road, Vepery,
Chennai 600 003. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for records from the file of respondent in impugned assessment order in Reference No.ZD3312231533203 dated 20.12.2023 passed under Section 73 for the F.Y.2017-18 and quash the same as illegal arbitrary and violative of principles of natural justice.

For Petitioner : Mr.R.Ananth

for Mr.R.Shenbagaraman

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 20.12.2023 passed by the respondent for the financial year 2017-2018.

2. Mr.T.N.C.Kaushik, learned Additional 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. Alleging that the petitioner had wrongly availed the Input Tax Credit (ITC) for the financial year 2017-2018, the respondent passed an impugned order dated 20.12.2023, demanding the payment of Rs.31,514/- in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that, a show cause notice and Form GST DRC-01 dated 30.09.2023 raised on the petitioner in the

GST common portal, as the petitioner was unaware of the same, it failed to respond the said show cause notice. Further, he submit that even an impugned order was uploaded in the GST portal under the head “View Additional Notices and Orders” tab and 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 to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings.

6. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader (Taxes) for the respondent and perused the materials available on record.

7. 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 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 with law.

8. For the reasons stated above, this Court is inclined to set aside the impugned order dated 20.12.2023 passed by the respondent with the following directions:-

(i) The order impugned herein is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of a copy of this order.

(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 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.

9. With the above directions, this Writ Petition is 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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To
The Assistant Commissioner (ST)(FAC),
Moor Market Assessment Circle,
Integrated Building for Commercial Taxes
and Registration Department,
2nd Floor, Room No.226,
No.32, Elephant Bridge Road, Vepery,
Chennai 600 003.

Krishnan Ramasamy,J.,

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