IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28854 of 2024
& W.M.P.Nos.31462, 31463 & 31465 of 2024

M/s.Sri Shivsakthi Mercantile Private Limited,
Represented by its Director,
Mr.Vinod Kothari,
No.662/2, T.H.Road, Tondiarpet,
Chennai 600 081.

... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Tondiarpet Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai 600 003.

2.The Branch Manager,
Axis Bank,
549, Thiruvottiyur High Road,
Korukkupet, Old Washermenpet,
Chennai 600 021.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the 1st respondent passed in GSTIN: 33ABCCS1225K1ZL/2021-22 dated 27.03.2024 and connected order under Section 73 dated 27.03.2024 and the Summary of the order in Form GST DRC-07 dated 27.03.2024 both issued in Ref.No.ZD330324183712J and quash the same as contrary to the provisions of TNGST Act, 2017 and also against the principles of natural justice.

For Petitioner	:	Mr.P.Rajkumar
For Respondent	:	Mr.T.N.C.Kaushik, Additional Government Pleader, for R1

ORDER

This writ petition has been filed challenging the impugned order dated 27.03.2024 passed by the 1st respondent.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader, takes notice on behalf of the 1st 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 as per the provisions of Rule 86B of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter called as “TNGST Act”), if the turnover of a Company exceeds a sum of Rs.50,00,000/-, the said Company shall avail 99% of the Input Tax Credit (ITC) available in their electronic credit ledger. On the other hand, since the petitioner is paying more than a sum of Rs.1,00,000/- as income tax from the FYs 2019-2020 onwards, the aforesaid restrictions will not be applicable to the petitioner and hence, the petitioner had availed 100% of the ITC available in their electronic credit ledger. Without considering the said aspect, the 1st respondent had uploaded the show cause notice for reversing the 1% of ITC.

4. Further, he would contend that all notices/communications were uploaded by the respondent under the column, viz., "View Additional Notices and Orders", in the GST portal. Since the petitioner was not aware of the said notices, they failed to file their reply within the time. Under these circumstances, the impugned order dated 27.03.2024 came

to be passed by the respondent without providing any opportunity of personal hearing to the petitioner. Hence, this petition has been filed. Further, he requests this Court to lift the bank attachment issued by the 1st respondent vide notice dated 06.08.2024 and de-freeze the bank account of the petitioner.

5. On the other hand, the learned Additional Government Pleader appearing for the 1st respondent would submit that the 1st respondent has uploaded the notices in the GST Online Portal. But the petitioner failed to avail the said opportunity. Further, he has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, he requested this Court to remit the matter back to the respondent, subject to the payment of 10% of the disputed amount by the petitioner.

6. In reply, the learned counsel for the petitioner would submit that since the petitioner falls under the exception carved out in Clause (a) in proviso to Rule 86B of the GST Rules, they are not liable to pay any

tax amount. Hence, he requests this Court to grant an opportunity to explain their case before the respondent.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the 1st respondent and also perused the materials available on record.

8. In the case on hand, as per the proviso to Rule 86B of the GST Rules, the petitioner is not liable to pay any tax amount. However, the petitioner, being unaware of the show cause notice, had failed to appear for personal hearing before the 1st respondent. In such case, it is clear that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, this Court is of the view that the impugned order was passed in violation of principles of natural justice since 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 27.03.2024 passed by the 1st respondent. Accordingly, this Court passes the

following order:-

(i) The impugned order dated 27.03.2024 is set aside and the matter is remanded to the 1st 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 copy of this order.

(iii) On filing of such reply/objection by the petitioner, the 1st 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, vide bank attachment notice dated 06.08.2024, cannot survive any longer and hence, it is lifted. As a sequel, the 2nd respondent is directed to release the attachment and de-freeze the bank account of the petitioner, immediately upon the production of a copy of this order.

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

01.10.2024

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

To

The Assistant Commissioner (ST),
Tondiarpet Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai 600 003.

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.28854 of 2024
& W.M.P.Nos.31462, 31463 & 31465 of 2024

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(4/9)