IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28433 of 2024 &

W.M.P.Nos.31001 & 31003 of 2024

Ms.Somasundaram Subbulakshmi
Proprietrix Puthu Vengarai Amman Traders,
Patta No.1048, S.F.No.83/2, Seriapalayam Road,
Kappalankarai, Coimbaore – 642 120. ... Petitioner

Vs.

The Assistant Commissioner [ST] [FAC],
Pollachi [Rural] Circle,
Pollachi – 642 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari by calling for the records of the respondent in his proceedings in GSTIN:33HNDPS4675E1ZQ/ 2021-2022 dated 13.03.2024 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.G.Nanmaran

Special Government Pleader [T]
ORDER

Challenging the impugned Order of the respondent in GSTIN: 33HNDPS4675E1ZQ/ 2021-2022 dated 13.03.2024 and quash the same as illegal, the present writ petition has been filed.

2. According to the petitioner, she is a dealer in cocunut which is exempted goods. The petitioner is a registered dealer under the GST Act. The respondent issued a notice in Form GST ASMT – 10 dated 20.05.2022 stating that the petitioner reported exempted turnover of Rs.1,05,64,236/- for the year 2021-22 for which she has to produce supporting documents in proof of exemption claimed. The respondent has issued a notice in GST DRC-01A dated 26.08.2022 intimation of tax liability of Rs.2,64,105.90 under CGST and SGST respectively. The respondent has also issued Form GST DRC 01 dated 24.11.2022 summary of Show Cause Notice proposing tax of Rs.2,64,105.90 under CGST and SGST respectively. As the petitioner has no knowledge and access to the portal, she could not file her reply to the notice. The

respondent has confirmed the proposal by stating that to the Show Cause notice the petitioner has not filed any reply and levied tax as per the proceedings dated 13.03.2024. The impugned Order passed by the respondent is arbitrary and illegal. The respondent has failed to consider that the HSN code for goods as per profile 0801 cocunut is exempted from tax. The petitioner effected only sales of coconut and claimed exemption on the sales turnover of coconut in the returns filed. Hence, the present writ petition.

3. Heard both sides and perused the documents enclosed in the typed set of papers. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. Though the petitioner raised very many grounds assailing the order impugned herein, the main contention of the learned counsel for the petitioner is that before passing the order impugned herein, the petitioner was not provided reasonable opportunity to submit their oral and written submissions and to file documents to substantiate their claim. Thus,

according to the learned counsel, the order impugned herein is arbitrary, illegal and in violation of the principles of natural justice. The learned counsel further submitted that the petitioner was not provided an opportunity of personal hearing to substantiate their case and seeks to set aside the impugned Order. He further submits that the petitioner is ready to deposit 10% of the disputed tax demand.

5. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that after analysing the facts and circumstances of the case, the respondent has passed the order impugned. However, he fairly submits that if any order is passed by this Court, the same will be complied with by the respondent.

6. Considering the facts and circumstances of the case coupled with the submissions made by the learned counsel on either side would demonstrate that there is clear violation of principles of natural justice on the part of the respondent in passing the order impugned herein, this court passes the following order:

[i] The order impugned herein is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax liability to the respondent within a period of four weeks from the date of receipt of a copy of this order;

[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 pass appropriate orders on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner, as expeditiously as possible.

7. This writ petition is disposed of on the above terms. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

30.09.2024

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

vrc

To

The Assistant Commissioner [ST] [FAC],
Pollachi [Rural] Circle,
Pollachi – 642 001.

KRISHNAN RAMASAMY, J.

vrc

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