IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29026 of 2024 &
W.M.P.Nos.31669, 31670 and 31672 of 2024

M/s.Balaji Cycles,
Represented by its Proprietor
Mr.Ranganathan Salai,
Chinna Sekkadu,
Manali, Chennai - 600 068. ... Petitioner

Vs.

1. The Deputy State Tax Officer,
   Manali Assessment Circle
   101, 1st Floor, Integrated
   C.T.Buildings, Chennai-600 003.

2. The Assistant Commissioner (ST)
   Manali Assessment Circle
   Integrated commercial Taxes Building,
   No.32, Elephant Gate Bridge Road,
   Chennai- 600 003.

3. The Branch Manager
   Indian Bank,
   No.18, Nedunchezian Street,
   Manali, Chennai- 600 008. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the impugned proceedings of the first respondent in GSTIN 33AIVPG5304N1ZY/2021-2022 dated 30.10.2023 and the connected order passed under Section 74 and the summary of the order dated 30.10.2023 in Form GST DRC-07 both issued in Reference No :ZD331023203122G and quash the impugned orders as passed contrary to the provisions of CGST/TNGST Act, 2017 and also against the principles of natural justice.

For Petitioner : Mr.P.Raj Kumar

For Respondents : Ms.AmirthaPoonkodi Dinakaran (R1 &R2)
Government Advocate (Taxes)

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O R D E R

This writ petition has been filed by the petitioner challenging the orders of the 1st Respondent dated 30.10.2023 and to quash the same.

2. Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate (Taxes) takes notice on behalf of the respondents 1 and 2.

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, initially the respondent has issued Show Cause Notice to the petitioner on 21.11.2022 followed by reminder notices dated 07.03.2023 and 16.09.2023. Since the aforesaid notices were uploaded in the GST portal, the Petitioner was not aware of the same and hence they had failed to file their reply. Under these circumstances, the impugned assessment order along with summary order dated 30.10.2023 came to be passed by the Respondent demanding tax along with penalty and interest for the Assessment Year 2021-2022. Subsequently, the bank account of the Petitioner was also attached vide order of the 2nd Respondent dated 13.03.2024. The Petitioner came to know of the impugned orders only after the attachment of bank account of the Petitioner.

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 Government Advocate (Taxes) would submit that the respondent uploaded the show cause notice as well as the reminder notices in the Online Portal. But the petitioner failed to submit reply to substantiate its case and therefore the impugned assessment order along with summary 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 Government Advocate (Taxes) has no serious objection.

8. Heard the learned counsel for the petitioner and the learned

Government Advocate (Taxes) for the respondent and also perused the materials available on record.

9. In the present case, since the show cause notice as well as the reminder notices 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 orders. Hence, this Court is of the view that the impugned orders are 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 orders dated 30.10.2023 passed by the 1st Respondent. Accordingly, this Court passes the following order:-

> (i) The impugned orders dated 30.10.2023 are set aside and the matter is remanded to the respondents 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 3rd 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.

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

04.10.2024

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

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