IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.28866 of 2024
and
W.M.P.Nos.31481 & 31482 of 2024

Tvl.Deeksha Paper Tube Industries,
Represented by its partner Murugesan Mari,
No.395/6-1, Zuzavadi, SIPCOT PO, Ganga Nagar,
Bederapalli, Hosur 635 126. ...Petitioner

Vs.

The Commercial Tax Officer (ST),
Hosur North-1, Assessment Circle,
Office of the Assistant Commissioner,
Commercial Taxes Building, Second Floor,
Hosur 635 109. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order bearing GSTIN 33AAKFD8535H1ZC dated 07-02-2024 along with summary order bearing reference no ZD330224047543P dated 08-02-2024 passed by the Respondent and quash the same.

For Petitioner : Mr.P.Gowtham
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 07.02.2024 along with summary order 08.02.2024 passed by the respondent.

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 time of admission stage itself.

4. Alleging that there are certain discrepancies in the returns filed by the petitioner for the financial year 2019-2020, the respondent passed an impugned order dated 07.02.2024 along with summary order dated 08.02.2024, demanding the payment of differential amount along with interest and penalty.

5. The learned counsel for the petitioner submitted that, a Show Cause Notice in Form DRC-01A dated 07.08.2023 raised on the petitioner in the GST common portal, as the petitioner was unaware of the said notices

uploaded in the GST portal, the petitioner failed to respond for the same, which led to the passing of the present impugned order. He submitted that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate its case and also the petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period. 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. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) appearing for the respondent submitted that subject to the payment of 10% of the disputed tax in respect of the impugned assessment period, this Court may remand the matter to the Authority concerned for passing appropriate orders.

7. 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.

8. 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 issued 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.

9. For the reasons stated above, this Court is inclined to set aside the impugned order dated 07.02.2024 along with summary order dated 08.02.2024 passed by the respondent with the following directions:-

(i) The orders impugned herein are 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 in respect of the impugned assessment period 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 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.

10. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

03.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,

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To
The Commercial Tax Officer (ST),
Hosur North-1, Assessment Circle,
Office of the Assistant Commissioner,
Commercial Taxes Building, Second Floor,
Hosur 635 109.

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