IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.09.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.28742 & 28746 of 2024
and
W.M.P.Nos.31347, 31356, 31351 & 31352 of 2024

Tvl. Sri Krishna Granites,
rep. By its Proprietor B.S.Ravi.
...Petitioner in both W.Ps.

Vs.

1. The Assistant Commissioner (ST)
   Krishnagiri -2 Assessment Circle,
   Krishnagiri – 635 001.

2. The Deputy State Tax Officer-I,
   Krishnagiri-2, Assessment Circle,
   Krishnagiri – 635 001.

R-1 & R-2 in both W.Ps.

3. The Deputy State Tax Officer,
   Intelligence, Hosur. ...R-3 in W.P.No.28742 of 2024

Prayer in W.P.No.28742 of 2024

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the impugned order of the second respondent in GSTIN : 33ADCPR7185C1ZL dated 02.02.2024 and the consequential summary of the order in Ref. No.ZD3302240072350 dated 02.02.2024 and to quash the same, and consequently, to direct the second respondent to await for the orders of the Appellate Authority.

Prayer in W.P.No.28746 of 2024

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the impugned order of the second respondent in GSTIN : 33ADCPR7185C1ZL dated 28.12.2023 and the consequential summary of the order in Ref. No.ZD331223233503Y dated 28.12.2023 and to quash the same, and consequently, to direct the respondent to entertain the records, documents and reply from the petitioner and then to pass orders after affording an opportunity of personal hearing to the petitioner.

For Petitioner in both W.Ps. : Mr.M.Hariharan

For Respondents in both W.Ps. : Ms. Amirta Poonkodi Dinakaran
Government Advocate (T)

Common Order

With consent, the main Writ Petitions are taken up for final disposal at the stage of admission itself.

2. The challenge in Writ Petition No.28742 of 2024 is to the order dated 02.02.2024 passed by the second respondent and the consequential summary of the order dated 02.02.2024 and to quash the same, and consequently, to direct the second respondent to await for the orders of the Appellate Authority.

2.1 So far as W.P.No.28746 of 2024 is concerned, the same has been filed by the petitioner challenging the order dated 28.12.2023 passed by the second respondent and the consequential summary of the order dated 28.12.2023 and to quash the same, and consequently, to direct the respondent to entertain the records, documents and reply from the petitioner and then to pass orders after affording an opportunity of personal hearing to the petitioner.

3. As issue involved in both Writ Petition is identical in nature, both the Writ Petition were heard together and disposed of vide this Common Order.

4. Mr.M.Hariharan, learned counsel for the petitioner would submit that insofar as W.P.No.28742 of 2024 is concerned, the second respondent issued DRC-01A notice dated 21.12.2022 alleging certain discrepancies in the returns filed by the petitioner; that subsequently, for the same issue, the third respondent issued DRC-01A on 31.07.2023, and since the petitioner's Accountant passed away, the petitioner was not aware of any notice being issued by the second and third respondents, hence, no reply was filed, however, the second respondent issued Form DRC-01 on 01.12.2023, and thereafter, passed an ex parte order dated 02.02.2024. The learned counsel assailed the impugned orders by contending that the second respondent, without taking note of the aspect that the third respondent also taken up the same issue, along with some other issues, passed the impugned orders, dated 02.02.2024 and subsequently, the third respondent also passed an ex parte order on 13.04.2024 (in respect of the same issue) and as against the order passed by the third respondent dated 13.04.2024, the petitioner has preferred an Appeal on 23.07.2024, and as a pre-condition for entertaining the Appeal, the petitioner has already paid 10% of the disputed tax, and therefore, pleaded that, if another 10% of the disputed is directed to the paid by the petitioner, the interest of the petitioner would be highly prejudiced. Therefore, the learned counsel prayed for appropriate orders.

4.1 **S**o far as W.P.No.28746 of 2024 is concerned, the learned counsel for the petitioner would submit that entire disputed tax has already been paid by the petitioner, therefore, sought for setting aside the impugned order without imposing any condition.

5. Ms. Amirta Poonkodi Dinakaran, learned Government Advocate (T) for the respondent would submit that the petitioner was granted with an opportunity to file reply and also to appear before the respondent, however, the petitioner failed to utilize those opportunities, therefore, the petitioner cannot have any say.

6. I have given due considerations to the submissions made on either side and perused the materials available on record.

7. On perusal of records, it is seen that the petitioner is a registered dealer on the files of the respondent; that subsequent to the introduction of the GST Act, which is w.e.f. 01.07.2017, the petitioner-Concern migrated from erstwhile enactment of TNVAT Act to GST Act; that since the petitioner is not educated, the petitioner entrusted the filing of the returns to an Accountant, however, the Accountant engaged by the petitioner passed away, which fact was unknown to the petitioner. Therefore, the petitioner was under the belief that their Accountant would be filing returns properly, however, only from the petitioner's Banker vide communication dated 19.07.2024, the petitioner came to know that the first respondent had issued a notice in Form GST DRC-13 and also initiated certain actions against the petitioner for the AY 2018-19 to 2022-23, in pursuance of the impugned orders.

7.1 Hence, this Court is of the opinion that the act of the petitioner, in not responding to the notices/communications sent by the petitioner is neither wilful nor wanton but owing to the fact that the petitioner is an unlettered, and lacks knowledge to use the GST Portal, due to which, he was totally unaware of proceedings, which ultimately led to the impugned orders.

7.2 Thus, in the present case, the impugned orders have been passed without waiting for reply from the petitioner and without affording any opportunity of personal hearing. Hence, this Court is inclined to set aside the impugned orders as they are nothing but ex parte orders and suffer from violation of principles of natural justice. Further, it is seen that both the second and third respondent passed ex parte orders dated 02.02.2024 and 13.04.2024, in respect of the same issue. Hence, this Court is inclined to set aside the impugned orders in both Writ Petitions. However, this Court considering the fact that the petitioner has already deposited 10% of the disputed tax as a pre-condition for filing Appeal against the order passed by the third respondent dated 13.04.2024, and that, in respect of the same issue, the second respondent has passed order dated 02.02.2024, which is impugned in W.P.No.28742 of 2024, is not imposing any condition on the petitioner for setting aside the impugned orders in W.P.No.28742 of 2024. Similarly, in W.P.No.28746 of 2024 also, this Court is not imposing any condition on the petitioner, in light of the fact that the petitioner has already deposited entire disputed tax.

8. Accordingly, this Court passes the following orders:-

In W.P.No.28742 of 2024:-

i) The impugned orders dated 02.02.2024 and the consequential summary of the order dated 02.02.2024 are set aside.

ii) The matter is remanded back to the respondent for fresh consideration.

iii) The petitioner is directed to file reply along with supportive documents within a period of three weeks from the date of receipt of a certified copy of this order.

iv) Thereafter, the respondent is directed to consider the same and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and after hearing the petitioner in full shall decide the matter in accordance with law.

In W.P.No.28746 of 2024 :-

i) The impugned orders dated 28.12.2023 and the consequential summary of the order dated 28.12.2023 are set aside

ii) The matter is remanded back to the respondent for fresh consideration.

iii) The petitioner is directed to file reply along with supportive documents within a period of three weeks from the date of receipt of a certified copy of this order.

iv) Thereafter, the respondent is directed to consider the same and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and after hearing the petitioner in full shall decide the matter in accordance with law.

v) The respondent concerned is directed to issue appropriate orders to the petitioner's Banker towards de-freezure of the petitioner's bank account.

7. In the result, both the Writ Petitions are allowed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

27.09.2024

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Index : yes/no
Neutral Citation : yes/no

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Intelligence, Hosur.

Krishnan Ramasamy,J.,

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