IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29000 of 2024
and
W.M.P.No.31655 of 2024

M/s.Madras Steel Agencies,
Represented by its Partner,
Mr.Rajendra Bhandari,
No.17/1, Ekambareswarar Agraharam,
Chennai, Tamil Nadu 600 003. ...Petitioner

Vs.

The Assistant Commissioner (ST),
MoooreMarket, Assessment Circle,
Integrated Commercial Taxes Offices Building
Chennai North Division North-II,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai 600 003. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the record of the impugned Order in Ref. No. ZD330224144336Q, dated 23.02.2024, under Section 73 Tamil Nadu Central Goods and Service Tax Act, 2017, for the assessment period 2018-2019 uploaded along with the summary of the order in form GST DRC-07 from the file of the Respondent herein, quash the same and direct the Respondent to pass a fresh order after providing an Opportunity of being heard to the Petitioner.

For Petitioner : Mr.Sanjay J. Rajpurohit
For Respondent : Mr.G.Nanmaran
Special Government Pleader (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 23.02.2024 passed by the respondent for the assessment year 2018-2019.

2. Mr.G.Nanmaran, learned Special 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 is a mismatch of tax liability between GSTR-3B and GSTR-2B filed by the petitioner for the financial year 2018-2019, the respondent passed an impugned order dated 23.02.2024, demanding the payment of differential amount in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that a show cause notice in Form GST DRC-01 dated 12.01.2024 raised on the petitioner in the GST common portal under the head "Additional Notices and Orders" tab, as the petitioner was unaware of the said notice uploaded in the GST portal, he failed to respond the said Show Cause Notice, 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. Further, he would submit that the petitioner's Bank account has been freezed, which causes much hardship to the petitioner. 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. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

6. Mr.G.Nanmaran, learned Special 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 can remand the matter to the Authority concerned for passing appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Special 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 23.02.2024 passed by the respondent with the following directions:-

(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 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.

(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. The respondent is directed to defreeze the Bank account of the petitioner immediately upon the production of a copy of this order along with proof for payment of 10% as per para no.9(i) above, in case the petitioner's Bank account is attached.

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

03.10.2024

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

To
The Assistant Commissioner (ST),
MoooreMarket, Assessment Circle,
Integrated Commercial Taxes Offices Building
Chennai North Division North-II,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai 600 003.

Krishnan Ramasamy,J.,

jd

W.P.No.29000 of 2024

03.10.2024