IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29036 of 2024 &
W.M.P.Nos.31680 and 31681 of 2024

Tvl.Hanishka Fashions
Rep. by its Proprietor Poonam Kela. ... Petitioner

Vs.

The Assistant Commissioner (St)
Kothawalechavadi Assessment Circle. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records in connection with the order passed by the respondent in GSTIN/ID:33APPPK814491Z6 2017-2018 dated 17.11.2023 in Reference No.ZD331123100914Z and quash the same as illegal and improper.

For Petitioner : Mr.Kingston Jerold

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

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O R D E R

This writ petition has been filed by the petitioner challenging the order of the Respondent dated 17.11.2023 and to quash the same.

2. Mr.C.Harsha Raj, 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 admission stage itself.

4. The learned counsel for the petitioner would submit that in the present case, initially the respondent has issued a intimation notice dated 30.05.2023 followed by Show Cause Notice to the petitioner dated 10.08.2023. 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 order dated 09.11.2023 came to be passed by the Respondent demanding tax along with penalty and interest for the Assessment Year 2017-2018.

Subsequently, the bank account of the Petitioner was also freezed. The Petitioner came to know of the said notices and the impugned order only after initiation of recovery proceedings by the Respondent.

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 Additional Government Pleader (Taxes) would submit that the respondent uploaded the intimation notice as well as show cause notice GST Online Portal. But the petitioner failed to submit reply to substantiate its case and therefore the impugned assessment 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 Additional Government Pleader (Taxes) has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent and also perused the materials available on record.

9. In the present case, since the intimation notice and the show cause notice 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 order. Hence, this Court is of the view that the impugned order is 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 order

dated 17.11.2023 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 17.11.2023 is set aside and the matter is remanded to the respondent 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 respondent is directed instruct the concerned bank 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

The Assistant Commissioner (St)
Kothawalechavadi Assessment Circle.

KRISHNAN RAMASAMY.J.,

arr

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