IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.28672 of 2024 &
W.M.P.Nos.31277 & 31279 of 2024

Tvl. S V Electricals,
Represented by its Managing Partner
Mr.Vishal Ostwal,
No.1, Venkatachalam Lane,
Park Town, Chennai,
Tamil Nadu 600 003. ...Petitioner

-Vs-

The Assistant Commissioner (ST) (FAC),
Park Town Assessment Circle,
No.32, Integrated Commercial Taxes,
Office Complex, Elephant Gate Bridge Road,
Chennai 600 003. ... 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 on the files of the respondent herein in FORM GST DRC 07 with Reference No.:ZD331223171981H dated 22.12.2023 along with the detailed proceeding in GSTIN:33ADKFS5543D1Z5/2017-18 dated 22.12.2023 for the tax period 2017-18 and quash the same.

For Petitioner : Mr.B.Syed Abdul Wakeel
for Mr.T.Suresh
For Respondent : Mr.V.Prashanth Kiran
Government Advocate (Tax)

ORDER

This Writ Petition has been filed by the petitioner challenging the order dated 22.12.2023 passed by the respondent for the tax period 2017-2018.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Tax), 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 filed by the petitioner for the taxable period 2017-2018, the respondent passed an impugned order 22.12.2023, demanding the payment of the differential amount in respect of the impugned assessment period.

5. The learned counsel for the petitioner would submit that, a show cause notice in Form GST DRC-01 dated 26.09.2023 and also a remainder notice dated 08.11.2023 raised on the petitioner in the GST portal. As the petitioner was unaware of the said notices uploaded in the GST portal, he failed

to respond the said notices, which led to the passing of the present impugned order. He submitted that even an impugned order was uploaded in the GST portal under the head “Additional Notices and Orders” tab and the physical version of such order was not served on the petitioner.

5.1. The learned counsel for the petitioner would further submit that the petitioner came to know about the impugned proceedings only on account of recovery proceedings initiated against the petitioner-company. It is also submitted that the entire tax amount has already been recovered by the respondent. 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. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent and perused the materials available on record.

7. 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 not aware 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.

8. For the reasons stated above, this Court is inclined to set aside the impugned order dated 22.12.2023 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 in respect of the impugned assessment period.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks from the date of receipt of a copy of this order.

(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.

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

26.09.2024

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

To
The Assistant Commissioner of GST (ST),
Park Town Assessment Circle,
No.32, Integrated Commercial Taxes,
Office Complex, Elephant Gate Bride Road,
Chennai 600 003.

Krishnan Ramasamy,J.,
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W.P.No.28672 of 2024

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