IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.28566 of 2024 and
W.M.P.Nos.31140 to 31142 of 2024

M/s.Hindustan Pipe Fitting Co.,
Rep., by its partner Om Prakash Jaiswal,
New No.36, Old No.14, Ground Floor,
Errabalu Chetty Street,
Broadway, Chennai 600 001. ...Petitioner

Vs.

1. The Assistant Commissioner (ST),
Broadway Assessment Circle,
Broadway: North-I: Chennai North,
32, Integrated Building Commercial Taxes Dept.,
Room No.304, 3rd Floor,
Elephant Gate Bridge Road, Vepery,
Chennai 600 003.

2. The Bank Manager,
Bank of India,
No.17, Errabalu Chetty Street,
Star House, Broadway, Chennai. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the records on the file of the 1st Respondent passed in GSTIN.33AADFH9594F1Z6/2018-19 and consequential order u/s 73 and Summary of the Order in Form GST DRC-07 having Ref No. ZD330424191869W all dated 25.04.2024 for the FY 2018-19 and quash the same as illegal, contrary to the provisions of the Act, arbitrary and against the principles of natural justice and fairplay and consequently direct the 1st respondent to lift the bank attachment notice issued to the 2nd respondent in GSTIN:33AADFH9594F1Z6/2024 in Form GST DRC-13 both dated 13.09.2024 attaching Petitioners bank account.

For Petitioner	:	Ms.Pooja Chopda
For Respondent 1	:	Mrs.K.Vasanthamala, Government Advocate (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the order dated 25.04.2024 passed by the first respondent.

2. Mrs.K.Vasanthamala, learned Government Advocate (Tax), takes notice on behalf of the respondent 1.

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 submitted that a Show Cause Notice in Form GST DRC-01 dated 31.01.2024 raised on the petitioner in the GST common portal under “Additional Notice” tab, as the petitioner was

unaware of the same, he failed to respond the said notice. Further, he would submit that his tax consultant, who had an access to portal as well who knows the password, failed to bring them about the show cause notice issued by the department. 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. The petitioner came to know about the impugned proceedings only when the petitioner received notice and attachment notice in Form GST DRC-13 dated 13.09.2024 from the first respondent, attaching the petitioner's Bank account. It is also submitted that, if an opportunity is provided and 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.

5. Mrs.K.Vasanthamala, learned Government Advocate appearing for the first respondent would submit that subject to the deposit of 10% of the disputed tax by the petitioner in respect of the impugned assessment period, this Court may remand the matter to the Authority concerned for passing appropriate orders.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) for the first 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 25.04.2024 passed by the first respondent with the following directions:-

(i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax in respect of the impugned assessment period to the first respondent 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 first 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 of the petitioner's Bank account cannot survive any longer and hence, it is ordered to be lifted. The second respondent is directed to de-freeze the petitioner's Bank account immediately upon the production of a copy of this order, and production of proof for remittance of 10% disputed tax in case the petitioner's Bank account is attached.

9. With the above directions, this 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
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To
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Krishnan Ramasamy,J.,

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