IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28548 of 2024
W.M.P.Nos.31106, 31109 & 31111 of 2024

Tvl.Sree Deepa Mobiles
Represented By Its Proprietor Valarmathi A
9/3048 Anna Salai Bhavani Main Road
Anthiyur- 638 501. ...Petitioner

Vs

1.The Deputy State Tax Officer - 2
(also Known As Deputy Commercial Tax Officer) Bhavani Assessment Circle
158 /11002 Pookadai Veethi
Bhavani 638 301

2.Assistant Commissioner (ST) (FAC)
Bhavani

3.The Branch Manager
Karur Vysya Bank
294, Bhavani Road Anthiyur
Erode Dt - 638 501. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 1st Respondent in GSTIN:33BCBPV5826K1ZA/2018 - 19 along with detailed order FORM GST DRC-07 with Ref. No. ZD3304242306820 dated 29.04.2024 in for the tax period APR 2018 -MAR 2019 quash the same.

For Petitioner : Mr.K.A.Parthasarathy

For Respondent : Mr.G.Nanmaran (For R1 & R2)
Special Government Pleader (Taxes)

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorari to call for the records of the respondents relating to the impugned order dated 29.04.2024 proceedings in GSTIN:33BCBPV5826K1ZA/2018 - 19 along with detailed order FORM GST DRC-07 with Ref. No. ZD3304242306820 and quash the same as illegal.

2. Mr.G.Nanmaran, learned Special Government Pleader (Tax), takes notice on behalf of the respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. On scrutiny of the returns filed by the petitioner for the Asessment Year 2018-2019, there is a differential turnover treated as sale suppression and it was proposed to levy tax by invoking the Rule 30 of Tamil Nadu General Sales Tax Rules 2017 (in short, 'the Rules'). The respondent has issued DRC-01A dated 13.10.2023 intimating the petitioner to pay the amount of tax on or before 27.10.2023. The petitioner had failed to pay the amount. As a result, the respondent had issued show cause notice to the petitioner on 09.12.2023. However, the petitioner was not aware of the communications sent through GST common portal, since it was handled by their erstwhile Accounts Officer, who left their Office in the month of February, 2024. As the said show cause notice was not noticed by the petitioner, the petitioner failed to respond to the same. Thereafter, the respondent passed the impugned order dated 29.04.2024, confirming the levy of tax and penalty as proposed in the show cause notice dated 9.12.2023. Since the petitioner

has failed topay the same, the petitioner-company Bank account has been freezed. Aggrieved by the same, the petitioner has filed the present Writ Petition.

5. The learned counsel for the petitioner would submit that the petitiioner could not respond to the show cause notice since their erstwhile Accounts Officer had left their Office and they were not aware of the said notice. He would submit that only on defreezing the bank account only, the petitioner came to know about the show cause notice and consequential impugned order. Therefore, the learned counsel would urge this Court to provide an oppostunity to the petitioner to substantiate their case and also he agrees to make a payment of 10% of the disputed tax demand made by the respondent in the impugned order.

6. The learned Additional Government Pleader appearing for the respondent would submit that subject to the deposit of 10% of the disputed tax demand by the petitioner, this Court can consider and pass appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader 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 issued through 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 opportunity of personal hearing to the petitioner to establish their 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 29.04.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside on condition that the petitioner deposits 10% of the disputed tax amount in respect of the impugned assessment period within a period of four weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) 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 instruct the Bank to unfreeze the Bank account of the petitioner immediately upon the production of a copy of this order.

(iv) 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.

10. 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

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