IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29244 of 2024 &
W.M.P.No.31913 of 2024

ESSEN Distributors
Rep by its Mr.Inder Kumar Rathi
S/o.Daulai Rathi
No.12/1, Vaidhyanathan Street
Sevenwells, Chennai- 600 001. ... Petitioner

Vs.

The State Officer (ST)
Vallalar Nagar Assessment Circle
Integrated Commercial Taxes Building
No.32, Elephant Gate Bridge Road,
Chennai- 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned demand Notice dated 25/09/2023, issued by the respondent in GSTIN:33AAEFE1806A1ZB/2022-2023 and to quash the same as illegal and arbitrary and direct the respondent to consider ad pass orders on the representation of the Petitioner dated 22.02.2024.

For Petitioner : Ms.S.Kavitha

For Respondent : Mr.T.N.C.Kaushik
Additional Government
Pleader (Taxes)

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ORDER

This writ petition has been filed by the petitioner challenging the order of the Respondent dated 25.09.2024 and to pass orders on the representation of the Petitioner dated 22.02.2024.

2. Mr.T.N.C.Kaushik, 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 the Respondent issued Show Cause Notice to the Petitioner on 21.04.2023, for which the Petitioner sent its reply by way of E-Mail.

But the Respondent without considering the same, has passed the impugned order dated 25.09.2024, demanding tax and penalty.

5.Further, he would submit that impugned 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 since the reply was sent by the Petitioner by way of E-Mail instead of uploading in the GST portal, the Respondent had not considered the same.

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, though the reply was filed by the Petitioner through E-mail, the same was not considered by the Respondent.

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 25.09.2023 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 25.09.2024 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 additional 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.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

14.10.2024

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

The State Officer (ST)
Vallalar Nagar Assessment Circle
Integrated Commercial Taxes Building
No.32, Elephant Gate Bridge Road,
Chennai- 600 003.

KRISHNAN RAMASAMY.J.,

arr

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