IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.28804 of 2024
and
W.M.P.Nos.31411 & 31412 of 2024

M/S.Chandrika Studio,
Rep., by its partner, V.R.Rajasekhar,
No.8, Pycrofts Road, Triplicane,
Chennai 600 005. ...Petitioner

Vs.

Deputy Commercial Tax Officer,
Thiruvallikeni Assessment Circle,
Room No.421,
Integrated Commercial Tax Building, Nandanam,
Chennai 600 035. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, call for the records relating to the order in GSTIN/ ID. 33AADFC6943K1ZD/ 2017- 18 dated 22- 12- 2023 passed by the respondent and to quash the same as opposed to principles of natural justice, unsustainable in law, arbitrary.

For Petitioner : Mr.K.Jeyachandran
For Respondent : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 22.12.2023 passed by the respondent.

2. Mrs.K.Vasanthamala, learned Government Advocate (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 time of admission stage itself.

4. Alleging that there is a mismatch of tax liability filed by the petitioner for the financial year 2017-2018, the respondent passed an impugned order dated 22.12.2023, demanding the payment of differential amount in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that, a Show Cause Notice in Form DRC-01 dated 26.09.2023 raised on the petitioner in the GST common portal. Since the petitioner's GST registration was cancelled in the year 2021, the petitioner had no occasion to gone through the GST Portal.

Hence, the petitioner failed to reply the said Show Cause Notice, which led to the passing of the present impugned order. 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 order in the month of August 2024 only on account of initiation of recovery proceedings. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate his case and also the petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period. 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. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) appearing for the respondent submitted that subject to the payment of 10% of the disputed tax in respect of the impugned assessment period, this Court may remand the matter to the Authority concerned for passing appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) 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 uploaded on the GST Portal Tab. According to the petitioner, the petitioner was unaware of the issuance of the show cause notice 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.

9. For the reasons stated above, this Court is inclined to set aside the impugned orders dated 22.12.2023 passed by the respondent with the following directions:-

(i) The orders impugned herein is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax in respect of the impugned assessment period 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 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.

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

03.10.2024

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

To
The Deputy Commercial Tax Officer,
Ashok Nagar, Central-1,

Chennai, Tamil Nadu 600 083.

Krishnan Ramasamy,J.,
jd

W.P.No.28804 of 2024

03.10.2024