IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29419 of 2024 & 29427 of 2024
W.M.P.Nos.32056, 32060,32066 and 32067 of 2024

M/s.Akhilesh Motorcycle Private Limited,
Represented by its Managing Director,
Mr.B.Gnanaprakash,
No.3/2, No.296, Indhira Nagar,
Chennai-Bangalore Highway,
Perumugai, Vellore-632009. ... Petitioner in both W.P.'s

Vs.

The State Tax Officer (Intelligence)
Office of the Joint Commissioner (ST),
Review Cell, Vellore Division, Vellore,
No.4, Barathiyar Salai,
Fort Round Road, Vellore-632001. ... Respondent in both W.P.'s

Prayer in W.P.No.29419 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the impugned proceedings of the Respondent in GSTIN:33AATCA2171L1ZF/2021-22 dated 02.02.2024 and the connected order under Section 74 and the summary of the order in Form

GST DRC-07 dated 02.02.2024 issued in Reference No:ZD330224012062A and quash the same as passed contrary to the provisions of the Central Goods and Service Tax Act, 2017 read with provisions of the Tamil Nadu Goods and Services Act, 2017 and also passed in contrary to the principles of natural justice.

Prayer in W.P.No.29427 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the impugned proceedings of the Respondent in GSTIN:33AATCA2171L1ZF/2022-23 dated 02.02.2024 and the connected order under Section 74 and the summary of the order in Form GST DRC-07 dated 02.02.2024 issued in Reference No:ZD330224011949H and quash the same as passed contrary to the provisions of the Central Goods and Service Tax Act, 2017 read with provisions of the Tamil Nadu Goods and Services Act, 2017 and also passed in contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
(in both W.P.'s)
For Respondents : Mr.C.Harsha Raj
(in both W.P.'s) Additional Government Pleader (Taxes)

***

COMMON ORDER

These writ petitions have been filed by the Petitioner challenging the assessment orders as well as the summary orders passed by the Respondent dated 02.02.2024 with respect to Assessment Years 2021-22 and 2022-23 and to quash the same.

2. Mr.C.Harsha Raj, 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, initially the Respondent issued intimation Notices to the Petitioner on 02.03.2023, for which the Petitioner sent a reply dated 17.03.2023, but the Respondent without considering the same has issued the Show Cause Notices dated 10.08.2023 in respect of two Assessment Years and the said Show Cause Notices along with three reminder notices dated 31.10.2023, 22.11.2023 and 18.12.2023 were uploaded in the GST Portal. Since the accountant of the Petitioner Firm had not

noticed the aforesaid notices, the Petitioner could not file its reply. Under these circumstances, the impugned assessment orders along with summary orders dated 02.02.2024 came to be passed by the Respondent demanding tax along with penalty and interest for the Assessment Years 2021-22 and 2022-23 and the said orders were also uploaded in the GST portal. The Petitioner came to know of the aforesaid notices as well as the impugned orders only after they received a call from the Respondent demanding the tax. Immediately, the Petitioner filed Appeals before the Deputy Commissioner (ST) GST Appeals, Vellore with a delay of 107 days and the Petitioner also paid 10% of the disputed tax at the time of filing the Appeals. But, the said Authority orally informed the Petitioner that delay period is beyond the condonable period and therefore the same could not be entertained and as on date the said Appeals are pending. Therefore, left with no other alternative, the Petitioner has filed these Writ Petitions challenging the impugned orders.

5.Further, he would submit that impugned assessment orders came to be passed without considering the reply submitted by the Petitioner to the intimation notices and without affording an opportunity of hearing to the Petitioner before passing impugned orders and therefore the same are in violation of principles of natural justice. He further submitted that since the Petitioner has already deposited 10% of the disputed tax amount before the Appellate Authority, instead of directing the Appellate authority to take the Appeals on file, the matters may be remanded back to the Respondent for reconsideration, in order to provide them an opportunity to file their reply along with the required documents to substantiate their claim. He therefore prays to set aside the impugned orders.

6. On the other hand, the learned Additional Government Pleader (Taxes) would submit that the Respondent uploaded the show cause notices as well as the reminder notices in the Online Portal. But the Petitioner failed to submit reply to substantiate its case and therefore the impugned assessment orders came to be passed. Therefore, the same does not warrant interference. That apart, he strongly opposed for setting aside the impugned orders by stating that remanding the matters back to the assessing officers is not a matter of right. If the Petitioner is aggrieved by the Assessment Order, the remedy available to the

Petitioner is to file an Appeal before the Appellate Authority which was also done in this case and this Court may direct the Appellate Authority to take the Appeals on file, by condoning the delay and thereafter pass appropriate orders and if such a direction is given, the Appellate Authority will consider the grounds of the Appeals as the objections of the Petitioner before passing orders. He further submitted that if this Court remand the matters back to the Assessing Officer, the Assessing Officer will be over burdened.

7. In reply, the learned counsel appearing for the Petitioner submitted that if the Appellate authority is directed to take the Appeals on file, the Petitioner will lose an opportunity before the Assessing Officer to substantiate their case.

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.

8. It is settled law that violation of principles of natural justice is a

failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

10. In the present case, prior to the issuance of the Show Cause Notices, intimation notices were issued for which the Petitioner also submitted its reply, but the Assessing authority without considering the same has again issued Show Cause notices to the Petitioner in respect of the Assessment Years 2021-22 and 2022-23 . The said Show Cause Notices along with three reminder notices were uploaded in the GST Portal. Since the Petitioner's accountant has not noticed, the Petitioner could not file its reply and therefore Impugned orders came to be passed, without affording an opportunity of hearing to the Petitioner and therefore the same are in violation of principles of natural justice and therefore the impugned order is liable to be set aside.

11. As far as the contention of the learned Additional Government

Pleader (Taxes) appearing for the Respondent with respect to the contention that remanding the matter back to the assessing officer is not a matter of right and instead of remanding the matter back to the Respondent for fresh consideration, the Appellate Authority may be directed to take the Appeals on file, by condoning the delay, though this Court in a humpty number of cases has condoned the delay in filing the Appeal and directed the Appellate Authority to take the Appeal on file and pass orders, in the case on hand already the Petitioner has given reply to the intimation notices, but the Respondent without considering the same has again issued Show Cause Notices. Therefore, as apprehended by the Petitioner, if the Appellate Authority is directed to decide the Appeal, the reply filed by them will remain unconsidered, resultantly they will lose the opportunity to represent their case before the Assessing officer. Therefore, this Court is not inclined to accept the contention of the learned Additional Government Pleader (Taxes) appearing for the Respondent.

12. The learned Additional Government Pleader (Taxes) appearing for the Respondent also submitted that the Assessing Officers will be

overburdened if the matters are remanded back to them for reconsideration but the said contention cannot be accepted. Merely because the Assessing Officers are overburdened, if the matters are not remanded back, justice could not be denied to the Petitioner. It is the duty of the Assessing Officers to consider each and every aspect and provide opportunity of hearing, before passing impugned orders.

13. Therefore, in view of all the aforesaid facts and circumstances and in the interest of justice, this Court is inclined to set aside the impugned orders passed by the Respondent dated 02.02.2024. Accordingly, this Court passes the following order:

(i) The impugned orders dated 02.02.2024 are set aside and the matter is remanded to the Respondent for fresh consideration.

(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 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.

14. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

04.10.2024

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

To

The State Tax Officer (Intelligence)
Office of the Joint Commissioner (ST),
Review Cell, Vellore Division, Vellore,
No.4, Barathiyar Salai,
Fort Round Road, Vellore-632001.

KRISHNAN RAMASAMY.J.,

arr

W.P.Nos.29419 of 2024 & 29427 of 2024

04.10.2024