IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.09.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.28710 of 2024

and
W.M.P.Nos.31305 &31306 of 2024

Tvl. Deepa Industries,
rep. by its Proprietor, Mr.K.Moorthy ...Petitioner

Vs.

The Deputy State Tax Officer,
Office of the Deputy Commercial Tax Officer,
Sathyamangalam Assessment circle
Sathyamangalam, Erode, T.N. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the impugned proceedings from the files of the respondent for the AY 2019-20 in GSTIN : 33AVNPM8872A1ZE/2019-20 dated 28.03.2024 and the Consequential DRC 07 order bearing Ref.No.ZD330324195511L dated 28.03.2024 and to quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr. V.Prashanth Kiran
Government Advocate (T)

Order

The challenge in this Writ Petition is to the order dated 28.03.2024 passed by the respondent for the AY 2019-20 and the Consequential DRC 07 order dated 28.03.2024 and to quash the same.

2. Mrs.R.Hemalatha, learned counsel for the petitioner contended that without even providing an opportunity of being heard, the impugned order came to be passed against the petitioner, which is in total violation of principles of natural justice, hence, prayed to set aside the same. Further, the learned counsel submitted that in the event, this Court is inclined to set aside the impugned order, the petitioner is agreable to pay 10% of the disputed tax amount and hence, prayed for appropriate orders.

3. Mr. V.Prashanth Kiran, learned Government Advocate (T) for the respondent fairly submitted that if the petitioner is ready and willing to deposit 10% of the disputed tax, then, the prayer sought for by the petitioner may be considered.

4. I have given due considerations to the submissions made on either side and perused the materials available on record.

5. On perusal of records, it is seen that the petitioner is an assessee on the files of the respondent; that for the AY 2019-20, the petitioner had paid the entire tax and also filed monthly returns and claimed ITC in GSTR-3B, however, the respondent-Department, upon scrutiny of the petitioner's returns, issued Form ASMT-10 dated 04.08.2023 alleging mismatch between the total turnover in GSTR-3B and GSTR-2A and directed the petitioner to file reply or pay the tax due within 30 days from the date of the issue of the said notice; that thereafter, the respondent further alleged that the petitioner has not replied to the notice dated 04.08.2023 and issued Form DRC-01A, without issuing a speaking order and issued DRC-01 notice dated 06.02.2024, directing the petitioner to pay the tax demand raised along with penalty and interest. Finally it was alleged by the respondent that the petitioner has not replied to the show cause notice and therefore, proposals contained in the show cause notice are confirmed and passed the assessment order dated 28.03.2024.

5. 1 Thus, it is crystal clear that the respondent, without waiting for reply from the petitioner to any of the notices sent by them and without affording any opportunity of hearing to the petitioner, kept on issuing notice followed by notice by alleging that the petitioner has failed to respond to such notices and passed the impugned order, which is in total violation of principles of natural justice. Therefore, this Court is inclined to set aside the impugned orders.

5.2 Accordingly, this Court passes the following orders/directions:-

i) The impugned order dated 28.03.2024 and consequential order with regard to recovery dated 28.03.2024 are set aside and the matter is remanded back to the respondent for fresh consideration.

ii) While remanding the matter, it is made clear that the impugned orders are set aside subject to the condition that the petitioner deposits 10%

of the disputed tax within a period of four weeks from the date of receipt of a copy of this order.

iii) Thereafter, the petitioner shall file a reply within three weeks and after the filing of reply, the respondent is directed to provide personal opportunity of hearing by issuing clear 14 days notice and after hearing the petitioner in full, shall decide the matter in accordance with law.

6. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.09.2024

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Index : yes/no
Neutral Citation : yes/no

To

The Deputy State Tax Officer,
Office of the Deputy Commercial Tax Officer,
Sathyamangalam Assessment circle

Sathyamangalam, Erode, T.N.

Krishnan Ramasamy,J.,

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