IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29619 of 2024
and
W.M.P.Nos.32277 & 32279 of 2024

Rotary Club of Madras,
rep. by Treasurer-Club Funds
158, Rayala Towers,
Anna Salai, Mount Road,
Chennai, Tamil Nadu – 600 002. Petitioner

Vs.

1. The State Tax Officer,
 Anna Salai Assessment Circle,
 Greams Road, Annex Building,
 Chennai – 600 006.

2. Deputy Commissioner (ST)
 Central-III, PAPJM Building
 3rd Floor,Greams Road, Chennai – 600 006. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records in the impugned order Ref No.ZD331123144986C dated 23.11.2023 issued by the first respondent and to quash the same and consequently, to direct the first respondent a personal hearing to the petitioner and decide the same in accordance with law.

For Petitioner : Mr.K.Senguttuvan

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader (T)

Order

With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the first respondent dated 23.11.2023 and to quash the same and consequently, to direct the first respondent to afford a personal hearing to the petitioner and decide the issue in accordance with law.

3. Mr.K.Senguttuvan, learned counsel for the petitioner would submit that show cause notice and other communications, which culminated in the impugned order were uploaded in the GST Portal, under the column " View Additional Notices and Orders" and the petitioner was not aware of the notices being uploaded in the GST Portal under the said column, as the petitioner used to verify their 'Dashboard' and the column, "View Notices and Orders', therefore, petitioner could file reply nor appear before the respondent on the date fixed for personal hearing and that the attitude of the petitioner in not filing reply or non-appearance before the respondent-Department is neither wilful nor wanton but only due to bona fide reasons

3.1 Therefore, learned counsel would submit that the impugned order suffer from violation of principles of natural justice and liable to be set aside, as the petitioner has not been afforded with an opportunity of personal hearing. Further, the learned counsel would submit that the disputed tax has already been recovered, therefore, prays for setting aside the impugned order.

4. Mr.C.Harsha Raj, learned Additional Government Pleader (T), who takes notice for the respondents fairly submitted that since the disputed tax has already been recovered, the prayer sought for by the petitioner may be considered.

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

6. On perusal of records, it is crystal clear that the impugned order came to be passed against the petitioner, behind their back, as the respondent-Department has not taken any steps to serve the show cause notices/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, that too, not in the usual tabs, which most of the taxpayers used to view, i.e. View Notices and orders", but were uploaded under the tab " Additional Notices and orders", hence, the petitioner, was not aware any such notices, therefore, could neither file reply nor appear before the respondent on the date fixed for personal hearing, however, the respondent proceeded to confirm the proposals contained in the show cause notice and passed the impugned order.

7. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned order and this is sufficient to hold that the impugned order is nothing but ex parte order, which is unsustainable in the eye of law and the notices/orders, which were merely uploaded to the GST Portal, can no longer be deemed to be a sufficient service in terms of Section 169 of the Act.

8. In the light of the above findings, this Court is inclined to set aside the impugned orders.

9. Accordingly, this Court passes the following orders/direction:-

i) The impugned order passed by the first respondent dated 23.11.2023 is set aside and the matter is remanded back to the first respondent for fresh consideration.

ii) The petitioner is directed to file reply along with supportive documents within a period of three weeks there from the date of receipt of a copy of this order.

iii) Thereupon, the first respondent is directed to consider the same and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner, and after hearing the petitioner in full, shall decide the matter in accordance with law.

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

14.10.2024

sd

Index : yes/no
Neutral Citation : Yes/No

To

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   Anna Salai Assessment Circle,
   Greams Road, Annex Building,
   Chennai – 600 006.

2. Deputy Commissioner (ST)
   Central-III, PAPJM Building
   3rd Floor,Greams Road, Chennai – 600 006.

Krishnan Ramasamy,J.,

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