IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29053 of 2024 &
W.M.P.Nos.31700 and 31703 of 2024

Tvl.Balasaraswathi Surgical and Pharmaceuticals
Rep. by its Proprietor B.Rajasekar
No.85/49A, Sabanayagar Street, Chidambaram,
Cuddalore District, Tamil Nadu-608 001
GSTIN:33AKFPR1584H1Z2 ... Petitioner

Vs.

The State Tax Officer (Inspection-III)
O/o the Commercial Tax Officer
1 Vallalar Nagar, Manjakuppam
Cuddalore- 607 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the Respondent herein in its Impugned Order passed by the Respondent in Impugned Order in Reference No.33AKFPR1584H1Z2/2023-24 dated 13.07.2024 along with consequential Order U/s 74 with Ref.No.:ZD3307241709643 dated 13.07.2024 for the F.Y. 2023-2024 and quash the same.

For Petitioner : Mr.R.Hemalatha

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

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ORDER

This writ petition has been filed by the petitioner challenging the order of the Respondent dated 13.07.2024 along with consequential order dated 13.07.2024 and to quash the same.

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, initially the respondent has issued a intimation notice dated 22.11.2023, citing four defects followed by Show Cause Notice to the petitioner dated 09.02.2024, for which the Petitioner filed its reply on 01.03.2024. Subsequently the Respondent issued reminders 1 and 2

dated 17.03.2024 and 25.04.2024 respectively, for which the Petitioner vide reply dated 29.04.2024 sought extension of time and in the meantime, the 3rd Reminder was also issued on 06.05.2024. The Petitioner filed its reply on 31.05.2024. Subsequently, impugned order along with consequential order dated 13.07.2024 came to be passed dropping three defects and upholding one defect viz., Defect No.2.

5.Further, she would submit that the reply filed by the Petitioner with respect to Defect No.2 was not properly considered by the Respondent. She further submitted that the Petitioner is having all the documents to substantiate his case with respect to Defect No.2 and therefore one more opportunity may be provided to him. She further submitted that if this Court rejects her request she has to file an Appeal, in which case, she will lose an opportunity before the assessing authority.

6. On the other hand, the learned Additional Government Pleader (Taxes) would submit that since the proper reply was not given by the

Petitioner in respect of Defect No.2 and the required documents were not submitted, impugned orders came to be passed. He therefore prays for dismissal of this Petition.

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, since out of four defects, three defects were dropped and since due to non production of required documents by the Petitioner coupled with non submission of proper reply, impugned order

came to be passed. However, in the interest of justice this Court is of the view that 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 orders dated 13.07.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The impugneds order dated 13.07.2024 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.

10. With the above directions, this writ petition is 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
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To

The State Tax Officer (Inspection-III)
O/o the Commercial Tax Officer
1 Vallalar Nagar, Manjakuppam
Cuddalore- 607 001.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.29053 of 2024

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