IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29104 of 2024
and
W.M.P.No.31771 & 31775 of 2024

M/s. Tinkas Industries Pvt. Ltd.,
Rep.by its Managing Director, P.Thangavel ...Petitioner

Vs.

1. The Assistant Commissioner (ST)
   Thiruvanmiyur Assessment Circle,
   Integrated Commercial Taxes &
   Registration Department Buildings,
   Room No.242, 2nd Floor
   Nandanam, Chennai – 600 035.

2. The Branch Manager,
   HDFC Bank, No.27, MGR Main Road,
   Kandanchavadi, Perungudi,
   Chennai – 600 096. ...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 of the first respondent vide the impugned ex parte order issued in Ref No.ZD330424225312Y dated 27.04.2024 in GST DRC-07 and to quash the same and further, to direct the first respondent to communicate to the second respondent to de-freeze the debit on all the accounts maintained by the petitioner with the second respondent in Account No.07952000002376 and PAN No.AAACO3114G, AAEPTO257C, AACPL2902Q, ABSPK9269Q & ADBPN7277L as the same is devoid of merits and violative of principles of natural justice.

For Petitioner : Mr.M.Karthikeyan

For Respondent-1 : Mr.G.Nanmaran
Special Government Pleader

Order

This Writ Petition is filed challenging the order passed by the first respondent dated 27.04.2024 and to quash the same and further, to direct the first respondent to communicate to the second respondent to de-freeze the debit on all the accounts maintained by the petitioner with the second respondent.

2. Mr.M.Karthikeyan, learned counsel appearing for the petitioner would submit that all the notices/communications, which culminated in the impugned order were merely uploaded in the GST Portal under the column, "View Additional notices/Orders", instead of uploading the same in the usual column, viz., Notices/Orders", hence, the petitioner was not aware of those notices and failed to file reply to those notices, however, the first respondent, without giving any opportunity of personal hearing to the petitioner, confirmed the proposals contained in the show cause notice and passed the present impugned order.

2.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and liable to be aside. However, the learned counsel would submit 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 order

3. Mr.G.Nanmaran, learned Special Government Pleader for the respondents 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 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 any notices/communications, which culminated in the impugned order directly through physical mode of service and made it available only in the GST Portal under the "View of additional notices and orders' column, which, the petitioner was not aware and ultimately, the impugned order came to be passed against the petitioner without even affording any opportunity of hearing to the petitioner, which is in total violation of principles of natural justice. Therefore, this Court is of the view that the impugned order is nothing but an ex parte order and the same has to be set aside order.

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

i) The impugned order dated 27.04.2024 is set aside and the matter is remanded back to the first respondent for fresh consideration.

ii) While remanding the matter, it is made clear that the impugned order is 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 first 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.

iv) The respondent-Department also, upon production of proof with regard to payment of 10% of the disputed tax made by the petitioner, is directed to pass appropriate orders towards defreezure of the petitioner's bank account forthwith.

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

03.10.2024

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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