IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28869 of 2024 &
W.M.P.Nos.31485, 31487 and 31488 of 2024

Tvl.Sri Vekkaali Amman Foods & Agencies
(Represented by its Proprietor
Rajasekaran),
233, Cauvery Street,
Bhavani, Erode,
Tamil Nadu - 638 301. ... Petitioner

..Vs..

1. The State Tax Officer,
(also known as Commercial Tax Officer)
Bhavani Assessment Circle,
Erode.

2. The Deputy Commissioner (ST)
Erode.

3. The Branch Manager,
Karur Vysya Bank,
P.B.No.2 190 I Floor, Sakthi Plaza,
Main Road, Bhavani- 638 301. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the files of the 1st Respondent in GSTIN:33BGKPR6775A1Z8/2018-19 for the tax period APR 2018-MAR 2019 along with FORM GST DRC - 07 with Ref.No.ZD330424027429H dated 03.04.2024 quash the same.

For Petitioner : Mr.K.A.Parthasarathy

For Respondents : Mr.T.N.C.Kaushik (R1 & R2)
Additional Government Pleader

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ORDER

This writ petition has been filed by the petitioner challenging the order of the 1st Respondent dated 03.04.2024 and to quash the same.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) takes notice on behalf of the respondents 1 and 2 .

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, show cause notice followed by three reminders were issued against the Petitioner and the same were uploaded in the in the GST Portal. Since the Petitioner's accountant resigned his job during the month of February 2024, the Petitioner was not aware of the said notices and therefore they had failed to file their reply. Under these circumstances, the impugned order dated 03.04.2024 came to be passed by the Respondent demanding tax along with penalty and interest for the Assessment Year 2018-2019 and the same was also uploaded in the GST portal. Subsequently, the bank account of the Petitioner was also attached by the 2nd Respondent. The Petitioner came to know of the impugned order only after receipt of the bank attachment order, the Petitioner came to know of the impugned order.

5.Further, he would submit that impugned assessment order came to be passed without affording an opportunity of hearing to the Petitioner and therefore the same is in violation of principles of natural justice and therefore prays to set aside the same.

6. On the other hand, the learned Additional Government Pleader (Taxes) appearing for the Respondent would submit that the respondent uploaded the show cause notice as well as the reminders in the GST Online Portal. But the petitioner failed to submit reply and therefore the impugned order came to be passed.

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, the show cause notice followed by

reminders were uploaded in the GST Portal. Since, the Petitioner's accountant resigned his job, the petitioner was not aware of the same and therefore they were not in a position to file reply for the show cause notice.

10. Further, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order is passed in violation of principles of natural justice and 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 order dated 03.04.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

> (i) The impugned order dated 03.04.2024 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 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.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment made on the bank account of the petitioner cannot survive any longer and hence, it is lifted. As a sequel, the 3rd respondent is directed to release the attachment on the bank account of the petitioner, immediately upon the production of proof with regard to the payment of 10% of the demand amount by the petitioner as stated above, along with a copy of this order.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

25.09.2024

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

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KRISHNAN RAMASAMY.J.,

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