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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024
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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29764 of 2024
and
W.M.P.No.32443 of 2024

s
M/s. Swamikannu Logistics Pvt. Ltd.,
Rep. by its Director, Mr.M.Achudhan. ...Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
   Selaiyur, Tambaram, Chengalpattu
   Tamil Nadu.

2. The Deputy Commissioner FAC (ST)
   Tambaram.

3. The Manager,
   HDFC Bank, G.N.Chetty Road,
   Chennai – 600 017.

4. The Manager,
   HDFC Bank,
   Old No.70, New No.69,
   LTDIRIS, Adyar, Chennai -600 020. ...Respondents

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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 impugned order passed by the first respondent, bearing Ref No.ZD3304242424000 dated 29.04.2024 directing the petitioner to pay a sum of Rs.19,63,238/- towards tax Rs.18,15,960/- towards interest and Rs.196322/- towards penaltY, totalling to Rs.39,75,520/- and consequently, to direct the respondents 2, 3 and 4 to de-freeze the petitioner's HDFC Bank Account No.50200031501461 and M.Achudhan's HDFC Bank Account No.50100176965121.

For Petitioner	:	M/s.S.Gayathri
For Respondents 1 & 2	:	Mrs.K.Vasanthamala Government Advocate (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 29.04.2024 directing the petitioner to pay a sum of Rs.19,63,238/- as tax and Rs.18,15,960/- towards interest and Rs.1,96,322/-

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towards penalty, totaling to Rs.39,75,520/- and consequently, to direct the respondents 2, 3 and 4 to de-freeze the petitioner's Bank Accounts.

3. M/s.S.Gayathri learned counsel for the petitioner would submit that the petitioner has been issued with a show cause notice in Form DRC-01 on 27.12.2023, via. GST portal, to which, the petitioner filed a detailed reply on 11.01.2024, the first respondent, without considering the reply in a proper manner and without hearing the petitioner, passing the impugned order dated 29.04.2024 and also initiated recovery proceedings against the petitioner, thereby, attaching the petitioner's bank accounts.

4. Therefore, the learned counsel would submit that the first respondent has passed the impugned order without affording an opportunity of personal hearing to the petitioner, which amounts to gross violation of principles of natural justice and also against the provisions contemplated under Section 75 (4) of the CGST Act, and hence, prayed for setting aside the impugned order.

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5. Mrs.K.Vasanthamala, learned Government Advocate (T), who takes notice for the respondents 1 and 2 submitted that the reply filed by the petitioner was considered, since, the same was not acceptable, the impugned order has been passed, however, she stated that since the petitioner has not been afforded with an opportunity of personal hearing, this Court may pass any orders, which would be complied with.

6. I have given due considerations to the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the first and second respondents and perused the materials available on record. Considering the nature of relief to the granted, this Court is of the view that notice to the respondent-Bank is not necessary and the same is dispensed with.

7. The petitioner is a registered tax payer on the files of the respondent-Department under the provisions of the TNGST/CGST Act 2017. For the AY 2018-19, the respondent-Department issued a show cause notice, to which, the petitioner filed reply, but, the same was not

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considered by them in a proper perspective, however, confirmed the proposals contained in the show cause notice due to the reason that the petitioner has not produced the supportive documents in support of their claim. However, this Court is of the view that if the respondent-Department is not convinced with the reply filed by the petitioner and is in need of any documents, they ought to have called upon the petitioner to produce those relevant documents, by providing an opportunity of personal hearing, without doing so, they cannot straight away slap the petitioner with the impugned order.

7.1 Therefore, it is sheer clear that the impugned order not only suffers from violation of principles of natural justice but also against the provisions contemplated under Section 75 (4) of the CGST Act, inasmuch as, in terms of Section 75(4), an opportunity of hearing ought to have been granted, where any adverse decision is contemplated against taxpayer (petitioner in this case). Therefore, this Court is inclined to set aside the impugned order.

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

i) The impugned order dated 29.04.2024 is 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 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 is directed to file all the documents available with them along with any additional reply, if any, within a period of two (2) weeks from the date of receipt of a certified copy of this order.

iv) Thereupon, the respondent is directed to issue a 14 days clear notice fixing a date of personal hearing to the petitioner, and after hearing the petitioner in full and perusing the documents, the first respondent shall decide the matter and pass orders in accordance with law.

9. In the result, the Writ Petition is allowed on the aforesaid terms.

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No costs. Consequently, connected Miscellaneous Petitions are closed.

14.10.2024

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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