IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

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The Honourable Mr.Justice KRISHNAN RAMASAMY

W.P.No.30188 of 2024
and W.M.P.Nos.32869 & 32870 of 2024

Avigna Housing Private Limited
Represented by its Authorized Director,
Mr.Shivagnanam Rajasekaran
No.1822, I Block,
13th Main Road, Anna Nagar West,
Chennai – 600 040.

...Petitioner

Versus

The Assistant Commissioner (ST) (FAC)
Amaindakarai Assessment Circle/
Amaindakarai Central II; Chennai Central
F-50, First Avenue, Anna Nagar East,
Chennai – 600 102.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records from the files of respondent in impugned assessment order in Reference No.ZD331223289631H dated 31.12.2023 passed for the F.Y.2017-18 and quash the same as illegal, arbitrary and violative of principles of natural justice.

For Petitioner : Mr.M.Prakash
For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader (Tax)

ORDER

Mr.C.Harsha Raj, learned Additional Government Pleader (Tax) takes notice for the respondent.

2. With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

3. The present writ petition has been filed by the petitioner challenging the impugned order dated 31.12.2023 passed by the respondent.

4. The learned counsel for the petitioner submitted that the petitioner has been duly filing the returns and paying all the statutory taxes. However, on verification of GSTR-3B and GSTR-1 filed for the year Financial Year 2017-18, it was found that the petitioner had effected huge purchases, but, corresponding sales turnover reported was very low/Nil and disproportionate resulting in lesser/Nil payment of taxes. It was also found that the taxable outward supply turnover reported by the petitioner was disproportionately

low. Hence, the respondent vide Notice in ASMT – 10 dated 31.08.2023, called for details/documents from the petitioner. Thereafter, the respondent had issued the Show Cause Notice in Form GST DRC-01 dated 30.09.2023, calling upon the petitioner to file their reply by 30.10.2023 and appear for personal hearing on 27.10.2023. Hence, the petitioner filed their reply dated 27.11.2023, requesting the respondent to drop the proceedings initiated in pursuant to the show cause notice. However, without considering the petitioner's reply and also, without providing an opportunity of personal hearing to the petitioner to put forth their case, the respondent has passed the impugned assessment order dated 31.12.2023. The impugned assessment order was uploaded in the "View Additional Notices and Orders" tab of the GST portal and the petitioner's Chartered Accountant had failed to communicate about the assessment order, to the petitioner. Hence, the petitioner was unaware of the impugned assessment order. The learned counsel further submitted that the petitioner came to know about the impugned assessment order only on 07.06.2024, when the respondent issued a Bank Attachment Notice to the petitioner. As per the instructions given by the respondent, the Axis Bank Ltd., Koyambedu Branch, Chennai – 600 107 has issued a Letter dated 12.06.2023, stating that a sum of Rs.31,35,951/-

was marked as lien in all active Bank Accounts of the petitioner. On 25.06.2024, the petitioner paid a sum of Rs.31,35,951/-, however, the respondent has not yet lifted the attachment made in the petitioner's GST cash ledger. Therefore, the learned counsel prayed this Court to quash the impugned assessment order.

5. On the other hand, the learned Additional Government Pleader (Tax) appearing for the respondent submitted that the matter may be remanded back to the respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax amount.

6. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader (Tax) appearing for the respondent and perused the materials available on record.

7. As far as this case is concerned, without providing an opportunity of hearing to the petitioner, the respondent has passed the impugned assessment order, which is in violation of the principles of natural justice. Therefore, this Court is of the opinion that the impugned assessment order is

ought to be quashed and an opportunity of personal hearing has to be afforded to the petitioner to establish their case.

8. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court issues the following directions:

(i) The impugned assessment order dated 31.12.2023 passed by the respondent is quashed and the matter is remanded back to the respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax amount to the respondent, within a period of four weeks from the date of receipt of a copy of this order. After making such payment, the petitioner shall produce the payment proof before the respondent.

(ii) It is made clear that quashing of the impugned order will come into effect, only from the date of payment of 10% of the disputed tax amount by the petitioner.

(iii) The petitioner is directed to file their Reply/Objection along with the required documents, if any, within a period of two weeks thereafter.

(iv) On production of aforesaid payment proof, the respondent shall consider the petitioner's Reply/Objection and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, as expeditiously as possible.

(v) Since the impugned assessment order itself has been quashed, the attachment of the petitioner's Cash Ledger Account cannot survive any longer. Hence, the attachment of petitioner's Cash Ledger Account is hereby ordered to be lifted. As a sequel, the petitioner is directed to produce a copy of the proof of payment of 10% of the disputed tax amount before the Manager, Axis Bank Ltd., Koyambedu Branch, Chennai – 600 107 and on production of the same, the Manager of the Bank shall de-freeze the petitioner's Cash Ledger Account, immediately.

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

17.10.2024

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Index : Yes/No
Speaking Order (or) Non-Speaking Order

To

The Assistant Commissioner (ST) (FAC)
Amaindakarai Assessment Circle/
Amaindakarai Central II; Chennai Central
F-50, First Avenue, Anna Nagar East,
Chennai – 600 102.

KRISHNAN RAMASAMY, J.

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