IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29111 of 2024
and
W.M.P.Nos.31780 & 31782 of 2024

M/s. Kaynes Technology India Ltd.,
rep. by its Plant Head and Authorized Signatory
Ms.A.Velu Baby ...Petitioner

Vs.

1. The Assistant Commissioner (ST)
   Integrated State Taxes Building,
   Vanagaram Assessment Circle,
   No.4/109, Chennai Bangalore Highway,
   Varadharajapuram, Nazarathpet,
   Poonamallee, Chennai – 600 123.

2. The Deputy Commissioner (ST)
   Integrated State Taxes Building,
   No.4/109, Chennai Bangalore Highways,
   Varadharajapuram, Nazarathpet,
   Poonamallee, Chennai – 600 123.

...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the files of the first respondent related to the impugned ex parte dated 12.04.2024 in GST DRC-07 for the assessment period 2018-19 and to quash the same as arbitrary.

For Petitioner : Mr.M.Karthikeyan

For Respondent : Mrs.K.Vasanthamala
Government Advocate (T)

Order

The challenge in this Writ Petition to the order passed by the first respondent dated 12.04.2024 for the assessment period 2018-19 and to quash the same as arbitrary.

2. Mr.M.Karthikeyan, learned counsel 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, since the petitioner failed to file reply, 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. Mrs.K.Vasanthamala, learned Government Advocate (T) 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, passed the impugned order, without affording any opportunity of hearing to the petitioner, which is in total violation of principles of natural justice. Therefore, this Court is inclined to set aside the impugned order.

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

i) The impugned order dated 12.04.2024 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.

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

To

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Krishnan Ramasamy,J.,

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