IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29974 of 2024
and
W.M.P.Nos.32673 & 32674 of 2024

M/s. Shree Rajaganapathy Steels,
rep. by its Partner, Tmt. C.Chandrakala. ...Petitioner

Vs.

1. The State Tax Officer (ST)
   Perundurai Circle, Perundurai,
   No.299, Bhavani Road,
   Perundurai – 638 052.

2. The Joint Commissioner (ST) Intelligence,
   Erode Division, Erode.

3. The Deputy Commissioner (ST)
   Erode, Erode – 638 001.

4. The Branch Manager,
   Dhanalakshmi Bank,
   10/210, Sathy Road, Veerapanchatram Erode. ...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 impugned summary of the order of the first respondent in Form GST DRC-07 bearing No.ZD330124023614Y/2019-20 dated

05.01.2024 and the consequential impugned bank attachment proceedings issued by the third respondent in Ref.No.33ABFFS8428J1ZV/Apr-2018 to Mar-2019 along with Form GST DRC-13 dated 27.06.2024 to the fourth respondent and to quash the same and consequently, to direct the first respondent to provide the relied upon documents in support of his stand and afford cross-examination with the suppliers and other third parties and then pass order after affording a personal hearing to the petitioner.

For Petitioner : Mr.M.Hariharan
For Respondents 1 to 3 : 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 summary of the order passed by the first respondent dated 05.01.2024 and the consequential impugned bank attachment proceedings issued by the third respondent along with Form GST DRC-13 dated 27.06.2024 to the fourth respondent and to quash the same and consequently, to direct the first respondent to provide the relied upon documents in support of his stand and afford cross-examination with the suppliers and other third parties.

3. Mr.M.Hariharan, learned counsel for the petitioner would submit that a Personal Hearing Notice dated 25.11.2023 was uploaded in the GST portal fixing a date of personal hearing on 02.12.2023, since the petitioner is an uneducated person, she was not aware of the said notice, even the Accountant engaged by the petitioner for filing the monthly returns informed the petitioner about the said notice only on 03.01.2024, therefore, the petitioner, who was not aware of said notice and other intimations, could not file reply and respond to those notices/intimations and that the petitioner came to know of the impugned adjudication order only when the petitioner's Banker informed the petitioner about the attachment of the bank account by the first respondent.

4. Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice as the petitioner has not been heard 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

5. Mrs.K.Vasanthamala, learned Government Advocate (T) who takes notice on behalf of the respondents 1 to 3 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.

6. I have given due considerations to the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 3 and perused the materials available on record. Considering the nature of order that is to be passed in this Writ Petition, this Court is of the view that the fourth respondent-Bank need not be served with any notice.

7. 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, hence, the petitioner was not aware of any such notices and only when the petitioner's Banker informed the petitioner about the attachment of the bank account by the first respondent, the petitioner came to know of the impugned adjudication order passed by the respondent-Department.

7.1 Further, it is seen that the Personal Hearing Notice issued by the first respondent on 25.11.2023, whereby, the petitioner was called upon to file reply and produce supportive documents in their defence was within a short period of time, i.e. 7 days (02.12.2023) and since the petitioner came to know the issuance of the said notice through the Accountant only belatedly, the petitioner was not in a position to appear, since, preparation of data and reply was very difficult in a very short period, however, filed reply on 03.01.2024 requesting for 15 days. However, the first respondent proceeded to pass the impugned order without hearing the petitioner. Thus, it is clear that the first respondent has not afforded personal hearing with a genuine intention to grant fair opportunity of being heard but the same seems to be an empty formality.

8. In the light of the above narrated facts, this Court is of the view that the impugned orders are wholly untenable not only on the ground of violation of principles of natural justice but also on other grounds. Hence, this Court is inclined to set aside the impugned order.

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

i) The impugned order dated 05.01.2024 passed by the first respondent and the consequential bank attachment proceedings issued by the third respondent dated 27.06.2024 to the fourth respondent are 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 orders are 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 certified 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 a 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.

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