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.29472 of 2024
and
W.M.P.Nos.32117, 32119 & 32120 of 2024

Tvl. Inovonz Engineering Pvt. Ltd.,
rep. by its Director,
Mr.Prasathbabu. ...Petitioner

Vs.

1. The Assistant Commissioner (ST)
   Medavakkam Assessment Circle,
   Fanepet, Nandanam, Chennai.

2. Deputy Commissioner (ST)
   Tambaram Zone, Chennai – 600 035,
   Room No.422, 4th Floor,
   No.1, PAPJM Building,
   Greams Road, Chennai- 600 006.

3. Indian Oil Corporation Ltd.,
   GSTIN : 37AAC11681G2ZN)
   Vizag Terminal Malkapuram,
   Visakapatnam, Andhra Pradesh – 530 011. ...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 in Form GST DRC-07 with Ref.No.AD3304242032051 dated 25.04.2024 along with detailed order in GSTIN: 33AACC11007J1Z3/2018-19 dated 25.04.2024 for the tax period April 2018 – March 2019 and to quash the same as arbitrary.

For Petitioners : Mr.N.Chandrasekar

For Respondents 1 & 2 : Ms.Amirta Poonkodi Dinakaran
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 25.04.2024 along with detailed order dated 25.04.2024 for the tax period April 2018 – March 2019 and to quash the same.

3. Mr.N.Chandrasekar, learned counsel for the petitioner assailed the impugned orders mainly on the ground that the same came to be passed against the petitioner, behind their back, as, the notices/communications, which culminated in the impugned orders were not served on the petitioner through physical mode and were merely uploaded in the petitioner's GST portal and the petitioner's in-house Accounts Officer, to whom, the petitioner has entrusted the work of filing of monthly returns, too, was not aware that the impugned notices and orders were being uploaded in the 'Additional Notices and Orders' tab of the GST portal.

4. Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and are liable to be aside. However, the learned counsel would submit that in the event, this Court is inclined to set aside the impugned orders, the petitioner is agreable to pay 10% of the disputed tax amount and hence, prayed for appropriate orders.

5. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (T) who takes notice for the respondents 1 and 2 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 on either side and perused the materials available on record. Considering the nature of relief to the granted herein, this Court is of the view that notice to the third respondent-Corporation is not necessary and the same is dispensed with.

7. On perusal of records, it is crystal clear that the impugned orders 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 "Additional notices and orders' column, neither the petitioner nor their Accounts Officer was aware of any such notices, and therefore, the petitioner could not file reply and give response, only when vendor of the petitioner's name, the third respondent was served with a garnishee notice dated 14.08.2024, by the second respondent, the petitioner became aware of the tax liability/penalty/interest by means of the impugned orders.

8. Thus, the first respondent passed the impugned orders without affording any opportunity of hearing to the petitioner, which is in total violation of principles of natural justice, and therefore, this Court is inclined to set aside the impugned order.

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

i) The impugned orders dated 25.04.2024 passed by the first 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 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.

iv) As the petitioner's vendor, viz., the third respondent, Indian Oil Corporation was served with a garnishee notice dated 14.08.2024, by the second respondent, upon production of the order copy along with proof for payment of 10% of the disputed tax by the petitioner, as directed by this Court, the garnishee order shall stand lifted immediately and thereafter, there is no impediment for the garnishee to make any payment to the petitioner or otherwise to deal with them.

10. 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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