IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29449 of 2024
and
W.M.P.No.32089 & 32092 of 2024

M/s.Astra Services,
Represented by its Proprietor,
No.75-A Cross Cut Road,
Gandhipuram,
Coimbatore 641 012. ...Petitioner

Vs.

1. The Assistant Commissioner (ST)(FAC),
Ram Nagar Circle,
Coimbatore 18.
2. The Branch Manager,
Central Bank of India,
830 Cross Cut Road,
Gandhipuram,
Coimbatore 641 012. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent in his proceedings in GSTN:33ALHPS5098N1ZB/2018-2019, quash the order dated 10.04.2024 passed therein.

For Petitioner : Mr.P.V.Sudakar

For R1 : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 10.04.2024 passed by the first respondent for the financial year 2018-2019.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes), takes notice on behalf of the first respondent.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. Alleging that there is a mismatch of tax liability filed by the petitioner for the financial year 2018-2019, the first respondent passed an impugned order dated 10.04.2024, demanding the payment of differential amount along with interest and penalty in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that, a show cause notice in Form DRC-01 dated 26.12.2023 raised on the petitioner in the GST

common portal, as the petitioner was unaware of the same, it failed to respond the said show cause notice. He would submit that both the show cause notice and an impugned order was uploaded in the GST portal under the head "View Additional Notices/Orders" tab and the physical version of such orders were not served on the petitioner. Further he submitted that, to recover the demand raised under the impugned order, the first respondent has issued a direction to attach the Bank account of the petitioner maintained with the second respondent, as a result of which, the petitioner's business activities have come to a standstill. Hence, he sought for appropriate orders from this Court for affording an opportunity to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate his case and also the petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment year.

6. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) would submit that subject to the deposit of 10% of the disputed tax by the petitioner in respect of the impugned assessment period, this Court can remand the matter to the Authority concerned for passing appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) for the first respondent and perused the materials available on record.

8. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned show cause notice was uploaded on the GST Portal Tab. According to the petitioner, the petitioner was unaware of the issuance of the show cause notice issued through the GST Portal and the original of the said show cause notice was not furnished to them. In such circumstances, this Court is of the view that the impugned order came to be passed without affording any opportunity of personal hearing to the petitioner to establish its case, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

9. For the reasons stated above, this Court is inclined to set aside the impugned order dated 10.04.2024 passed by the first respondent with the

following directions:-

(i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax in respect of the impugned assessment period to the first respondent within a period of four weeks from the date of receipt of a copy of this order; and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of a copy of this order.

(iii) On filing of such reply/objection by the petitioner, the first respondent shall consider the same and issue a 14 days clear notice by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment of the petitioner's Bank account cannot survive any longer and hence, it is ordered to be lifted. The second respondent is directed to de-freeze the petitioner's Bank account immediately upon the production of a copy of this order, in case the petitioner's Bank account is attached.

10. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

03.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
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Krishnan Ramasamy,J.,

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