IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29843 of 2024
and
W.M.P.Nos.32536 & 32538 of 2024

Alpha Security Instruments (India) Pvt. Ltd.
Rep. By its AGM (Accounts I & E). ...Petitioner

Vs.

Deputy Commercial Tax Officer,
Thirumazhisai Avadi,
Thiruvallur, T.N. ...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari call for the records in the proceedings of the Respondent in Summary of the Order in Form GST DRC-07 bearing Reference No.ZD3304242365800 dated 29.04.2024 passed by the Respondent and to quash the same as arbitrary and illegal or pass

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (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 proceedings of the respondent in Summary of the Order in Form GST DRC-07 dated 29.04.2024 and to quash the same.

3. The facts of the case, in short, are as follows:-

i) The petitioner is an assessee on the files of the respondent. The respondent issued a show cause notice in Form DRC-01 dated 27.12.2023, for the year 2018-19, wherein, the respondent demanded reversal of ITC availed by the petitioner, on the ground that the petitioner had availed ITC from tax payer, who did not pay tax on outward supply made to the petitioner. Subsequently, vide the impugned order dated 29.04.2024, confirmed the said demand. Hence, the present Writ Petition.

4. Mr.Joseph Prabakar, learned counsel for the petitioner would submit that the respondent has issued a show cause notice in Form DRC-01, dated 27.12.2023, to which, the petitioner filed a reply on 16.04.2024 in Form GST DRC-06, however, the respondent, without affording any opportunity of personal hearing to the petitioner, passed the impugned order, thereby, confirming the proposals contained in the show cause notice.

4.1 The learned counsel would submit that in terms of Section 75 (4) of the CGST Act, it is mandatory to provide an opportunity of hearing to the assessee before passing any adverse order, whereas, in the present case, no such opportunity was granted to the petitioner before confirming the demand made in the show cause notice, therefore, the impugned order is not only against the provisions contemplated under the Section 75 (4) of CGST Act but also suffers from violation of principles of natural justice, as the petitioner has not been heard before passing such order. Hence, the learned counsel prayed to set aside the impugned order.

5. Mr.C.Harsha Raj, learned Additional Government Pleader (T), for the respondent sought time to get instructions from the respondent regarding the aspect as to whether the petitioner has been afforded with opportunity of hearing before passing the impugned order, and this Court, acceding to such request, passed over the matter. Thereafter, when the matter was taken up at the post lunch, learned Additional Government Pleader fairly admitted that no personal hearing opportunity was afforded to the petitioner subsequent to the receipt of the reply from the petitioner to the show cause notice, therefore, submitted that appropriate orders may be passed.

6. I have given due considerations to the submissions made on either side and perused the materials available on record.

7. The petitioner is an assessee on the files of the respondent under the provisions of the CGST/SGST Act. The respondent issued a show cause notice in Form DRC-01 dated 27.12.2023, for the year 2018-19, wherein, the respondent demanded reversal of ITC availed by the petitioner, on the ground that the petitioner had availed ITC from tax payer, who did not pay tax on outward supply made to the petitioner. Hence, the present Writ Petition. The petitioner, upon receipt of such show cause notice, filed reply dated 16.04.2024 in Form GST DRC-06, however, the respondent, without affording any opportunity of personal hearing to the petitioner, passed the impugned order, thereby, confirming the proposals contained in the show cause notice.

8. In terms of Section 75 (4) of the CGST Act, it is mandatory on the part of the respondent to provide an opportunity of hearing to the assessee before passing any adverse order, whereas, in the present case, no such opportunity was granted to the petitioner before confirming the demand made in the show cause notice, therefore, the impugned order is not only against the provisions contemplated under the Section 75 (4) of CGST Act but also suffers from violation of principles of natural justice. 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 29.04.2024 is set aside.

ii) Consequently, the matter is remanded to the respondent for fresh consideration, in which case, the respondent is directed to issue a clear 14 days notice, thereby, affording an opportunity of personal hearing to the petitioner and after considering the reply that has already been filed by the petitioner and hearing the petitioner in full, shall decide the matter in accordance with law.

10. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

04.10.2024

sd

Index : yes/no
Neutral Citation : yes/no

To
Deputy Commercial Tax Officer,
Thirumazhisai Avadi,
Thiruvallur, T.N.

Krishnan Ramasamy,J.,

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W.P.No.29843 of 2024

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