IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30522 of 2024
& W.M.P.Nos.33141 & 33144 of 2024

Jagannadhan Sekar,
Rep by its Proprietor, J.Sekar,
No.40/2, NA, Gandhi Road,
Velacherry, Chennai 600 042.

... Petitioner

Vs.

The State Tax Officer,
(Formerly known as Commercial Tax Officer),
Velacherry: South-III, Chennai,
Station No.571, Integrated Commercial Taxes and
Registration Department (South Tower),
Room No.234, 2nd Floor, Nandanam,
Chennai 600 035.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in DRC-07 Ref.No.ZD330424225546J/2018-19 dated 27.04.2024 and quash the same as arbitrary, illegal.

For Petitioner : Mr.S.Ramanan

For Respondent : Ms.Amirta Poonkodi Dinakaran,
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order dated 27.04.2024 passed by the respondent.

2. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in this case, a show cause notice was issued by the respondent on 02.12.2021, for which, the petitioner had filed their reply on 04.03.2022. Thereafter, three reminder notices were issued by the respondent with regard to personal hearing on 12.12.2022, 01.03.2024 and 13.03.2024. However,

being unaware of the said notices, the petitioner was unable to appear before the respondent. Under these circumstances, the impugned order dated 27.04.2024 came to be passed by the respondent. Hence, he requests this Court to set aside the impugned order and provide an opportunity to establish his case before the respondent.

4. On the other hand, the learned Government Advocate appearing for the respondent would submit that though three notices were issued by the respondent with regard to the personal hearing, the petitioner had failed to appear before the respondent. Hence, she would contend that though sufficient opportunities were provided by the respondent, the petitioner had failed to avail the same and there is no fault on the part of the respondent. Hence, she requested this Court to set aside the present petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and also perused the materials available on record.

6. In the case on hand, it is clear that initially a show cause notice was issued by the respondent on 02.12.2021, for which, the petitioner filed their reply on 04.03.2022. After considering the said reply, the respondent had issued three reminder notices dated 12.12.2022, 01.03.2024 and 13.03.2024 calling upon the petitioner for personal hearing. However, in spite of the issuance of three notices, the petitioner had failed to appear before the respondent. In such case, it is clear that there is no fault on the part of the respondent.

7. Normally, an Assessee will have two opportunities to present their case. One is before the Assessing Officer and another is before the Appellate Authority. The Appellate Authority will also have similar power of the Assessing Officer to adjudicate the petitioner's case. In the present case, the petitioner himself had voluntarily given up the rights of filing the reply and personal hearing before the Assessing Officer. Hence, once a person had given up his rights, he cannot claim it back as he lost his opportunity. In such situation, he has to avail the second

opportunity to present their case before the Appellate Authority. Therefore, this Court is inclined to dismiss this petition by granting liberty to the petitioner to file an appeal before the concerned Appellate Authority.

8. Accordingly, this writ petition is dismissed. The petitioner is directed to file their appeal before the concerned Appellate Authority within a period of 30 days from the date of receipt of copy of this order. In such case, the Appellate Authority shall consider the same on its own merits and in accordance with law by providing sufficient opportunity to the petitioner without pressing for limitation. No cost. Consequently, the connected miscellaneous petitions are also filed.

18.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

KRISHNAN RAMASAMY.J.,

nsa

To

The State Tax Officer,
(Formerly known as Commercial Tax Officer),
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