IN THE HIGH COURT of JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.30198 of 2024
and WMP.Nos.32882 & 32885 of 2024

Tvl. SR Transport,
Represented by Shri.Selvaraj Rajagopal,
Old Address No.9/3/10, 5th Floor,
Sri Annai Ramana Marvel,
Gengu Reddy Road,
Chennai, Tamil Nadu, 600 008.
Present Address: 170/1, 3rd Main Road, New No.41,
Natesan Nagar, Virugambakkam,
Chennai – 600 092. … Petitioner

Vs.

1.The Assistant Commissioner (ST),,
Egmore Assessment Circle,
No.88, Mayor Ramanathan Salai, Taluk Office Building,
2nd Floor, Spur Tank Road,
Chetpet, Chennai – 600 031.

2.The Deputy Commissioner (ST), GST Appeals-1,
No.1, PAPJM Building (Annexe), 3rd Floor,
Greams Road,
Chennai – 600 006. … Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records and quash the impugned order passed by the 1st respondent in FORM GST DRC-07 vide Reference No.ZD3304241623998, dated 22.04.2024 and direct the 1st respondent to refund an amount of Rs.34,79,940/- recovered from the petitioner by the 1st respondent and pass appropriate orders after considering the submissions made by the petitioner, and to issue a writ, order or direction to 1st respondent or pass such other orders as this Court may deem fit in the facts and circumstances of the instant case.

For Petitioner : Mr.A.P.Ravi

For Respondents : Mrs.K.Vasanthamala,
Government Advocate (Taxes)

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O R D E R

This Writ Petition is filed to call for the records and quash the impugned order passed by the 1st respondent in FORM GST DRC-07 vide Reference No.ZD3304241623998, dated 22.04.2024 and direct the 1st respondent to refund an amount of Rs.34,79,940/- recovered from the petitioner by the 1st respondent and pass appropriate orders after considering the submissions made by the petitioner, and to issue a writ, order or direction to 1st respondent or pass such other orders as this Court may deem fit in the facts and circumstances of the instant case.

2.Mrs.K.Vasanthamala, learned Government Advocate, takes notice on behalf of the respondents. By consent of both the parties, the main writ petition is taken up for disposal at the admission stage itself.

3.The case is that the petitioner, engaged in the transportation of goods by road, challenges the impugned order issued by the 1st respondent under FORM GST DRC-07 dated 22.04.2024, which confirmed a demand for the financial year (FY) 2017-18. The petitioner asserts that audits were conducted for FY 2017-18, 2018-19 and 2019-20, resulting in show cause notices (SCNs) for all three years concerning discrepancies between GSTR-3B and Form 26AS, as well as GSTR-9/9C. Although the petitioner duly replied to the SCNs through FORM DRC-06 along with supporting documents, the department, while dropping proceedings for FY 2018-19 and 2019-20, confirmed the demand for FY 2017-18. The petitioner was unaware of the order for FY 2017-18 until recovery proceedings were initiated, leading to a deduction of Rs.34,79,940/- from the petitioner's bank account on 08.08.2024. The petitioner contends that since similar SCNs for FY 2018-19 and 2019-20 were dropped, they reasonably assumed the same outcome for FY 2017-18. However, the respondent adopted a dual approach and confirmed the demand without considering the submissions. The petitioner claims that they are covered under Notification

No.13/2017 – Central Tax (Rate), which mandates that GST on transportation of goods by road be paid under reverse charge mechanism (RCM) by he recipient of the service (their corporate clients). As a result, the petitioner filed NIL GSTR – 3 B returns, as no tax liability rested on them. The petitioner argues that the Department has acted arbitrarily by not considering these facts for FY 2017-18, despite accepting the same stance for FY 2018-19 and 2019-20. The order, according to the petitioner, is illegal and contrary to the law. Furthermore, the petitioner asserts that thy missed the appeal and rectification periods due to being unaware of the order. Hence the petition.

4.The learned counsel for the petitioner would submit that after receipt of the show cause notices dated 11.09.2023 for the FY 2017-18, 15.11.2023 for the FY 2018-19 and dated 15.11.2023 for the FY 2019-20, the petitioner has filed its reply on 27.11.2023 and the same was uploaded in the GST portal. However, without considering the prayer and non-application of mind, the impugned order was passed. He further submitted that since the Department had dropped the proceedings in SCN for the FY 2018-19 and FY 2019-20, the petitioner had thought that the same would be the case for FY 2017-18 as well. However, the 1st respondent had confirmed the SCN for the FY 2017-18 vide the impugned order and without giving an opportunity of being heard physically, which is clearly a violation of principles of natural justice. He further submitted that they were completely unaware of the impugned order being passed against them. Hence the said impugned order is liable to be set aside.

5.On the other hand, the learned Government Advocate appearing for the respondent would submit that the respondent has uploaded the notices in the GST Online Portal. But the petitioner failed to avail the said opportunity. She has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Further she submitted that this Court can remand the matter to the Authority concerned for passing appropriate orders.

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

7.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 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.

8.For the reasons stated above, this Court is inclined to set aside the impugned order dated 22.04.2024 passed by the 1st respondent with the following directions:-

> *(i) The impugned order dated 22.04.2024 is set aside and the matter is remanded to the 1st respondent for fresh consideration;*
>
> *(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 copy of this order.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 3 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, within a period of six weeks.

9.With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

15.10.2024

Index : Yes / No
Internet : Yes / No
Speaking order/Non-speaking order
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To

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KRISHNAN RAMASAMY, J.

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