IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30189 of 2024
& W.M.P.Nos.32871 & 32872 of 2024

Rajaa Offset,
Rep by its Prop.Mahalinga Raja,
108, Melaraja Veedhi,
Mannargudi,
Tiruvarur 614 001

... Petitioner

Vs.

The State Tax Officer (FAC),
Mannargudi Assessment Circle,
West First Street,
Water Tank Building,
Mannargudi 614 001.

... 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 TIN: 33BOQPM8772J1Z6/2018-19 dated 24.05.2024 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.A.Chardrasekaran

For Respondent : Mr.G.Nanmaran,
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 24.05.2024 passed by the respondent.

2. Mr.G.Nanmaran, learned Special Government Pleader, 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, though the show cause notice in DRC-01 dated 27.12.2023 was issued under Section 73 of the Goods and Services Tax Act, 2017 (hereinafter called as "GST Act"), the impugned order came to be passed by the respondent under Section 74 of the GST Act on 24.05.2024.

4. He would also submit that if the respondent is intend to pass an assessment order under Section 74 of the GST Act, they are supposed to have issued a notice under Section 74 of the GST Act, satisfying the ingredients stated in the said Section, viz., fraud, wilful-misstatement or suppression of facts to evade tax, etc. However, in this case, no such notice was issued by the respondent. Hence, at any cost, no order can be passed under Section 74 of the GST Act. Therefore, he would contend that the said impugned order is not only in violation of principles of natural justice but also in violation of law.

5. In reply, the learned Special Government Pleader appearing for the respondent had also confirmed the submissions made by the petitioner and would submit that though the notice in Form DRC-01 was issued by the respondent, the petitioner had failed to file their reply. Under these circumstances, the impugned order came to be passed by the respondent. Hence, he requests this Court to pass appropriate orders.

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

7. In the case on hand, it is an admitted fact that though the notice in Form DRC-01 was issued under Section 73 of the GST Act, the impugned order was passed under Section 74 of the GST Act. As contended by the petitioner, if at all if there is an intention to pass any assessment order under Section 74 of the GST Act, the respondent is supposed to have issued a notice by fulfilling the conditions narrated under Section 74 of the GST Act. In this case, it is apparent that no such notice was issued under Section 74 of the GST Act. When such being the case, no order can be passed by the respondent under Section 74 of the GST Act and hence, the impugned order passed by the respondent is not only in violation of principles of natural justice but also against the provision of law.

8. In view of the above, this Court is inclined to set aside the impugned order passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 24.05.2024 is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner is directed to consider the aforesaid assessment order dated 24.05.2024 as a notice issued under Section 74 of the GST Act and 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 14 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, as expeditiously as possible.

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

15.10.2024

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

To

The State Tax Officer (FAC),
Mannargudi Assessment Circle,
West First Street,
Water Tank Building,
Mannargudi 614 001.

KRISHNAN RAMASAMY.J.,

nsa

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