IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29886 of 2024
and
W.M.P.Nos.32590 & 32592 of 2024

Tvl.K.K.Enterprises,
Rep. by its Proprietor,
Karthikeyan Sivakumar,
15, Saminathapuram Bharathidasan Street,
Advent Christian Church,
Vengavasal, Chengalpattu,
Tamil Nadu-600 126. ...Petitioner

Vs.

The Deputy State Tax Officer,
Madipakkam Assessment Circle,
Commercial Taxes Department,
Room No.233-II Floor, Integrated
Commercial Taxes and Registration
Department Building, Anna Salai,
(Veterinary Hospital Back Side),
Nandanam, Chennai-600 0035. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in and connected with impugned order in GSTIN:33EGXPS2813E1Z4/2017-18 dated 21.12.2023 issued by the respondent and quash the same as arbitrary, in violation of principles of natural justice and illegal.

For Petitioner	:	Mr.B.Satishsundar
For Respondent	:	Mrs.K.Vasanthamala, Government Advocate (Taxes)

ORDER

Challenging the impugned order dated 21.12.2023 passed by the respondent relating to the assessment year 2017-2018, the petitioner had filed the present Writ Petition.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) 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. Alleging that there are certain discrepancies in the returns filed by the petitioner for the assessment year 2017-2018, the respondent passed an impugned order dated 21.12.2023, demanding the payment of differential amount along with interest and penalty.

4. The learned counsel for the petitioner submitted that, a notice in Form DRC 01, dated 12.09.2023 was raised on the petitioner's GST portal along with an opportunity of personal hearing, followed by three reminder notices dated

01.11.2023, 14.11.2023 and 20.11.2023. However, the petitioner's Auditor failed to bring the knowledge of the said notices issued by the Income Tax Department, the petitioner failed to reply for the said show cause notice. Thereby, the impugned order is passed *exparte* without providing any opportunity to the petitioner to putforth their case before the respondent. He would further submit that the petitioner is now ready and willing to pay 10% of the disputed tax made by the respondent in the event of providing an opportunity to them to file their reply/objections along with the required documents to substantiate their claim.

5. On the other hand, Mrs.K.Vasanthamala, learned Government Advocate (Taxes) would submit that the respondent uploaded the notice in the GST Online Portal thereby directing the petitioner to file their reply and appear for personal hearing and only thereafter, passed the order impugned herein. However, the learned counsel has no objection for granting relief subject to certain terms.

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

7. Considering the above submissions made by the learned counsel on either side, it appears that the petitioner's Auditor has failed to communicate about the proceedings, thereby, the petitioner unable to file their reply to the said show cause notice, which led to the passing of the present impugned order. 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 their 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 21.12.2023 passed by the respondent. Accordingly, this Court passes the following orders:-

(i) The order impugned herein is set aside on condition that the petitioner deposits 10% of the disputed tax demand in respect of the assessment year in question within a period of four weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(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 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.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

04.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The Deputy State Tax Officer,
Madipakkam Assessment Circle,
Commercial Taxes Department,
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Commercial Taxes and Registration
Department Building, Anna Salai,
(Veterinary Hospital Back Side),
Nandanam, Chennai-600 0035.

Krishnan Ramasamy,J.,

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