IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30772 of 2024 &
W.M.P.Nos.33374, 33376 and 33378 of 2024

Mr.Gotham Katariya,
Proprietor,
M/s.Kataria Pipes. ... Petitioner

Vs.

1. The Assistant Commissioner (ST)
Kodungaiyur Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai 600003.

2. Deputy Commissioner (GST-Appeal),
Chennai-I,
Room No.230, Second Floor,
Commercial Tax Office Campus Main Building,
No.1, Greams Road, Thousand Lights,
Chennai 600 006.

3. The Branch Manager, Bank of India,
No.3, Ethiraj Swamy Salai, M.R.Nagar,
Chennai- 600 118. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records culminating in Order No.ZD3304241889631 dated 24.04.2024, issued by the 1st respondent and consequential communication dated 21.08.2024 addressed to the 3rd Respondent and quash the same and consequently direct the Respondents to refund to the Petitioner, all the amounts recovered/realized from the Petitioner pursuant to the Order No.ZD3304241889631 dated 24.04.2024 issued by the 1st Respondent.

For Petitioner : Mr.M.Aravind Subramaniam
Senior Standing Counsel

For Respondent : Ms.K.Vasanthamala
Government Advocate (Taxes)(R1)
Mr.R.P.Pragadish,
Senior Standing Counsel (R2)
***

ORDER

This writ petition has been filed by the Petitioner challenging the order dated 24.04.2024, passed by the 1st respondent and consequential communication dated 21.08.2024 addressed to the 3rd Respondent and quash the same and consequently direct the Respondents to refund to the Petitioner, all the amounts recovered/realized from the Petitioner pursuant to the Order No.ZD3304241889631 dated 24.04.2024 issued by the 1st Respondent.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) takes notice on behalf of the 1st Respondent. Mr.R.P.Pragadish, learned Senior Standing Counsel takes notice on behalf of the 2nd Respondent.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned Senior counsel for the Petitioner would submit that the 1st Respondent issued Show Cause Notice to the Petitioner on 03.04.2023, for which the Petitioner submitted its detailed reply, but the Respondent without considering the same in a proper perspective passed an order on 24.04.2024, confirming the proposal of taxes made in the notice for the period from April 2018 to March 2019, together with interest and penalty. Subsequently, the 1st Respondent addressed a letter to the 3rd Respondent on 19.08.2024 requesting them to initiate recovery proceedings, pursuant to the which a sum of Rs.1,43,000/- has been recovered from the Petitioner's bank account.

5. Further, he would submit that the impugned assessment order came to be passed nearly after the period of one year from the date of submitting the reply by the Petitioner and also without giving an opportunity of personal hearing to the Petitioner. That apart since the accountant of the Petitioner Firm was admitted in the hospital at the time of passing of impugned assessment order and as the same was also uploaded only in the GST portal, the Petitioner was not aware of the same. As a result, the time for filing Statutory Appeal also got expired. He therefore prays to set aside the impugned assessment order.

6. On the other hand, the learned Government Advocate (Taxes) appearing for the 1st Respondent fairly agreed that the impugned assessment order was passed nearly after the period of one year. He further submitted that a sum of Rs.1,43,000/- has been recovered from the Petitioner's bank account and therefore prayed for appropriate orders.

7. Heard the learned Senior counsel for the Petitioner and the learned Counsel for the Respondents and also perused the materials available on record.

8. In the case on hand, admittedly show cause notice was issued on 03.04.2023 and reply was filed on 02.05.2024 and the impugned order came to be passed on 24.04.2024 i.e., nearly after a period of one year. If the Respondent intends to confirm the proposal raised in the show case notice, it is mandatory to grant an opportunity of personal hearing, in terms of Section 75 (4) of the Central Goods and Services Tax Act,2017, but the same has not been done in this case.

9. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

10. In such view of the matter, this Court is inclined to set aside the impugned order dated 24.04.2024 passed by the 1st Respondent and the consequential communication dated 21.08.2024 sent by the 1st Respondent to the 3rd Respondent. Accordingly, this Court passes the

following order:-

(i) The impugned order dated 24.04.2024 as well as the communication of the 1st Respondent dated 21.08.2024 are set aside and the matter is remanded to the Respondents for fresh consideration.

(ii) The Respondents shall consider the reply filed by the Petitioner 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.

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

19.10.2024

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

To

The Assistant Commissioner (ST),
Sevapet Assessment Circle,
Integrated CT Buildings,
Pichards Road, Salem.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.30772 of 2024

19.10.2024