IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29892 of 2024
and
W.M.P.Nos.32596 to 32598 of 2024

TVL.BACKIYA STORES.
Represented by its Proprietor - Anbiah Rajan Mohan Roy,
No.10, Achuthadoss Street,
Jesupatham Nagar,
Guduvancherry, Kancheepuram,
Tamil Nadu-603 202 ...Petitioner

Vs.

1. Deputy State Tax Officer-2,
Chengalpattu Assessment Circle,
No.16A, First Floor,
First Main Road,
Anna Nagar, Chengalpattu 603 001.

2. Deputy Commissioner (ST)
Chengalpattu Zone,
No.26, Abirami Complex,
Mahalakshmi Nagar,

Thimmavaram, Chengalpattu-603 101.

3. Bank Manager,
Indian Bank,
5 GST Road, Guduvancherry,
Chengalpattu-603 202.

4. The Sub Registrar,
Sub-registrar Office,
21, Grand Southern Trunk Rd,
Jaibeemnagar, Guduvancheri, Tamil Nadu-603 202.

... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the First Respondent's impugned order in GSTIN 33AFZPR3443J1ZU/2017-18 dated 29.12.2023 and the connected Summary Order in Form GST DRC-07 bearing Ref. No.ZD331223263083U dated 29.12.2023, and seeking to quash the same, and consequentially direct the Second Respondent to withdraw the Notice bearing Reference GSTIN.33AFZPR3443J1ZU/2017-18/DSTO-4 dated 22.02.2024 and the connected Form GST DRC-13 dated 22.02.2024, and the Notice bearing Ref. No. GSTIN 33AFZPR3443J1ZU/2019-20 dated 06.06.2024, issued to the Third Respondent and Fourth Respondents respectively.

For Petitioner : Mr.D.S.Vipula
For Respondent 1 & 2: Mr.T.N.C.Kaushik
Additional Government Pleader
(Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 29.12.2023 passed by the first respondent for the financial year 2017-2018.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) takes notice on behalf of the respondents 1 and 2.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. Alleging that there is a mismatch of tax liability filed by the petitioner for the financial year 2017-2018, the respondent passed an impugned order dated 29.12.2023, demanding the payment of differential amount in respect of the impugned assessment period.

5. The learned counsel for the petitioner submitted that a show cause notice in Form GST DRC-01 dated 09.10.2023 raised on the petitioner in the GST common portal under the head "View Additional Notices and Orders" tab.

Since the petitioner's GST registration was cancelled, the petitioner had no occasion to gone through the GST Portal. Hence, the petitioner failed to reply the said Show Cause Notice. He submitted that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner. Further, he would submit that the petitioner's Bank account and immovable properties have been attached vide orders dated 22.02.2024 and 06.06.2024, which causes much hardship to the petitioner. Hence, he sought for appropriate orders from this Court for affording an opportunity to the petitioner to present the case by way of filing a suitable reply and participate in the proceedings. It is also submitted that, if an opportunity is provided, the petitioner would be able to substantiate his case and also he agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

6. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) appearing for the respondents 1 & 2 submitted that subject to the payment of 10% of the disputed tax in respect of the impugned assessment period, this Court can remand the matter to the Authority concerned for passing appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader (Taxes) for the respondents 1 & 2 and perused the materials available on record.

8. 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 issued 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.

9. For the reasons stated above, this Court is inclined to set aside the impugned orders dated 29.12.2023, consequential notice dated 22.02.2024 and

attachment notice dated 06.06.2024 issued by the second respondent with the following directions:-

(i) The orders impugned herein are set aside and the matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax in respect of the impugned assessment period within a period of four weeks from the date of receipt of a copy of this order; and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(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 first 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.

(iv) Considering the fact that the impugned orders itself has been set aside, this Court is of the opinion that the attachment made on the Bank account and immovable properties of the petitioner cannot survive any longer and hence, it is lifted. The second respondent is directed to defreeze the Bank account of the petitioner and the attachment made in the immovable properties of the petitioner immediately upon the production of a copy of this order and proof for payment of 10% of the disputed tax as ordered by this Court, in case the petitioner's Bank account and immovable properties are attached.

10. With the above directions, this Writ Petition is disposed of. There is no order as to 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
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Krishnan Ramasamy,J.,

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