IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.30885 of 2024
and
W.M.P.Nos.33469 & 33470 of 2024

Tvl. R.G. Impex
Rep.by its Proprietor
Giridharlal Bhattad. ...Petitioner

Vs.

Deputy Commercial Tax Officer
Kothawalchavadi
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Wall Tax Road,
Vepery, Chennai – 600 003. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the impugned order of the respondent in TN-GST-33ADPPG4823P1Z5/2018-19 dated 01.09.2023 along with Order and Summary of Order in Ref No.ZD330923001172Y dated 01.09.2023 and to quash the same as arbitrary, and consequently, to direct the respondent to refund the amount of Rs.2,31,791/- (Rupees Two Lakhs Thirty One Thousand Seven Hundred and Ninety One only) debited from the petitioner towards his alleged tax liability and to further entertain the records, documents and reply from the petitioner and then, to pass order affording an personal hearing opportunity to the petitioner.

For Petitioner : Ms.K.Tharani

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

Order

With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the Order of the respondent dated 01.09.2023 along with Order and Summary of Order dated 01.09.2023 and to quash the same, and consequently, to direct the respondent to refund the amount of Rs.2,31,791/- (Rupees Two Lakhs Thirty One Thousand Seven Hundred and Ninety One only) debited from the petitioner towards his alleged tax liability.

3. Ms.K.Tharani, learned counsel submit that all the show cause notice, personal hearing notice and other communications, which culminated in the impugned orders were merely uploaded in the GSTPortal, under the head "View Additional Notices and Orders" and since the petitioner has not been served on any notices through physical mode, they being a small entity, was not aware of the notices being uploaded in the GST Portal, therefore, they had no occasion to peruse the said notices and give reply and further, due to prolonged illness, the petitioner-Concern was not able to participate in the assessment proceedings, and that attitude of the petitioner in not filing reply or non-appearance before the respondent neither wilful nor wanton but only due to bona fide reasons, however, the respondent passed the impugned order without hearing the petitioner and also debited a Rs.2,31,791/- from the petitioner's bank account, which is highly arbitrary.

3.1 Therefore, learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and are liable to be set aside, as the petitioner has not been heard before passing the impugned orders. Further, the learned counsel would submit that the petitioner has already deposited entire disputed tax, therefore, prays for setting aside the impugned orders.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader (T) for the respondent fairly submitted that since the petitioner had already deposited entire disputed tax, the prayer sought for by the petitioner may be considered.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. On perusal of records, it is crystal clear that the impugned orders came to be passed against the petitioner, behind their back, as the respondent has not taken any steps to serve the show cause notices/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, therefore, the petitioner, who was suffering from prolonged illness was not in a position to view the GST Portal then and there and that only when the respondent-Department took steps for initiating the recovery proceedings and debited a Rs.2,31,791/- from the petitioner's bank account, the petitioner became aware of the existence of tax due, interest & penalty by virtue of the impugned order.

7. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned orders and this is sufficient to hold that the impugned orders are nothing but ex parte orders, which are unsustainable in the eye of law and the notices/communications, which were merely uploaded to the GST Portal, can no longer be deemed to be a sufficient service. Hence, this Court is inclined to set aside the impugned orders passed by the respondent.

8. Accordingly, this Court passes the following orders/direction:-

i) The impugned order dated 01.09.2023 and the consequential proceedings related to recovery dated 01.09.2023 are set aside and the matter is remanded back to the respondent for fresh consideration.

ii) The petitioner is directed to file reply along with supportive documents within a period of three weeks from the date of receipt of a certified copy of this order.

iii) Thereupon, the respondent is directed to consider the same and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner, and after hearing the petitioner in full, shall decide the matter in accordance with law.

9. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.10.2024

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Index : yes/no
Neutral Citation : yes/no

To

Deputy Commercial Tax Officer
Kothawalchavadi
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Wall Tax Road,
Vepery, Chennai – 600 003.

Krishnan Ramasamy,J.,

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