IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.30209 of 2024
and
W.M.P.Nos.32893 & 32894 of 2024

Kariamanickam Karupannasamy
Proprietor of Tvl. Fortune Traders. ...Petitioner

Vs.

The Assistant Commissioner (ST)
Perundurai Assessment Circle, Erode,
No.300, Bhavani Road, Perundurai – 638 052. ...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the respondent and to quash the impugned order passed under Section 74 of the GST Act dated 30.12.2023 and consequential summary of the order in Form GST DRC-07 dated 30.12.2023 in GSTIN : 33BHJPK0378/Z8 for the FY 2017-18 both passed by the respondent and both having Ref.No.ZD331223278939Y.

For Petitioner : Mr.N.V.Narayanan

For Respondent : Mrs.K.Vasanthamala
Government Advocate (T)

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 orders passed by the respondent under Section 74 of the GST Act dated 30.12.2023 and consequential summary of the order dated 30.12.2023 for the FY 2017-18 | and to quash the same.

3. Mr.N.V.Narayanan, learned counsel for the petitioner would submit that the respondent issued a show cause notice dated 10.10.2023, pointing out certain discrepancies in the ITC availed by the petitioner in GSTR-3B and Auto populated Form GSTR 2A, to which, the petitioner filed reply dated 27.10.2023 along with supportive documents, but the respondent without considering the reply filed by the petitioner and the documents passed the impugned order against the petitioner dated 30.12.2023, as if, no reply was filed. Therefore, the learned counsel would submit that the impugned orders have been passed due to non application of mind and also suffers from violation of principles of natural justice and are liable to be aside.

4. Mrs.K.Vasanthamala, learned Government Advocate (T) who takes notice on behalf of the respondent would submit that show cause notice dated 10.10.2023 was issued to the petitioner, fixing a date for filing reply and personal appearance on 30.10.2023, since the petitioner failed to appear during the personal hearing, impugned order came to be passed under the premise that no reply was filed.

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 seen that the respondent issued a show cause notice on 10.10.2023, calling upon the petitioner's reply and fixing date of personal hearing on 30.10.2023. The said show cause notice was issued on account of certain discrepancies noticed in ITC availed by the petitioner in GSTR-3B returns and auto populated ITC reported in GST4-2A. However, since the show cause notice did not contain the elements of a valid show cause notice under Section 74 of the GST Act, the petitioner, filed a reply dated 27.10.2023 along with extracts of IGST paid on import transaction along with Bill of Entry and sought for cancellation of tax and penalty. Thus, after filing the said reply, the petitioner was under the impression that the respondent, on being convinced with the reply filed by the petitioner, would drop the proposals contained in the show cause notice and swayed by such thought, the petitioner also not appeared before the respondent on the date fixed for personal hearing i.e., on 30.10.2023. However, the respondent, who, was unmindful of the reply filed by the petitioner, on being moved by the aspect that the petitioner has not appeared for the personal hearing fixed on 30.10.2023, arrived at a wrong assumption that the petitioner had not filed reply and passed the impugned order.

7. Thus, this Court is of the view that the impugned order is an outcome of total non-application of mind and suffers from violation of principles of natural justice and also against the provisions of Section 75 (4) of the CGST Act. Hence,, this Court is inclined to set aside the impugned order.

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

i) The impugned order dated 30.12.2023 and the consequential summary of the order dated 30.12.2023 are set aside and the matter is remanded back to the respondent for fresh consideration.

ii) The respondent is directed to peruse the reply filed by the petitioner dated 27.10.2023 and after perusing the reply and documents shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and after conducting a full-fledged hearing, the respondent is directed to pass a speaking order.

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

14.10.2024

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Index : yes/no
Neutral Citation : yes/no

To

The Assistant Commissioner (ST)
Perundurai Assessment Circle, Erode,
No.300, Bhavani Road, Perundurai – 638 052.

Krishnan Ramasamy,J.,

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