IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.30865 of 2024
and
W.M.P.Nos.33453 & 33454 of 2024

National Maligai Agencies,
rep. by its Proprietor,
Mr.Abdul Khader Sheik Dawood. ...Petitioner

Vs.

The State Tax Officer
J.J.Nagar Assessment Circle,
Room No.333, 3rd Floor,
Nandanam, Chennai – 600 035. ...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 of the respondent in Ref.No.ZD3308242807634/2019-20 dated 29.08.2024 and to quash the same as arbitrary.

For Petitioner : Mr.S.Ramanan

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. Mr.S.Ramanan, learned counsel for the petitioner would submit that the respondent has issued a show cause notice in Form DRC-01, dated 21.05.2024 to which, the petitioner filed a reply on in Form GST DRC-06 dated 20.06.2024, however, the respondent, without affording any opportunity of personal hearing to the petitioner, passed the impugned order, thereby, confirming the proposals contained in the show cause notice.

2.1 The learned counsel would submit that in terms of Section 75 (4) of the CGST Act, it is mandatory to provide an opportunity of hearing to the assessee before passing any adverse order, whereas, in the present case, no such opportunity was granted to the petitioner before confirming the demand made in the show cause notice, therefore, the impugned order is not only against the provisions contemplated under the Section 75 (4) of CGST Act but also suffers from violation of principles of natural justice, as the petitioner has not been heard before passing such order. Hence, the learned counsel prayed to set aside the impugned order.

3. Mrs.K.Vasanthamala, learned Government Advocate (T), who takes notice for the respondent would submit that personal hearing opportunity was afforded to the petitioner subsequent to the receipt of the reply from the petitioner to the show cause notice, however, the petitioner failed to appear, therefore, submitted that appropriate orders may be passed.

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

5. The petitioner is an assessee on the files of the respondent under the provisions of the CGST/SGST Act. The respondent issued a show cause notice in Form DRC-01 dated 21.05.2024; that the petitioner, upon receipt of such show cause notice, filed reply dated in Form GST DRC-06 dated 20.06.2024, however, the respondent, without affording any opportunity of personal hearing to the petitioner, passed the impugned order, thereby, confirming the proposals contained in the show cause notice.

6. In terms of Section 75 (4) of the CGST Act, it is mandatory on the part of the respondent to provide an opportunity of hearing to the assessee before passing any adverse order, whereas, in the present case, no such opportunity was granted to the petitioner before confirming the demand made in the show cause notice, therefore, the impugned order is not only against the provisions contemplated under the Section 75 (4) of CGST Act but also suffers from violation of principles of natural justice. Hence, this Court is inclined to set aside the impugned order.

7. Accordingly, this Court passes the following orders/directions:-

i) The impugned order dated 29.08.2024 is set aside.

ii) Consequently, the matter is remanded to the respondent for fresh consideration, in which case, the respondent is directed to issue a clear 14 days notice, thereby, affording an opportunity of personal hearing to the petitioner and after considering the reply that has already been filed by the petitioner and hearing the petitioner in full, shall decide the matter in accordance with law.

8. 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
The State Tax Officer
J.J.Nagar Assessment Circle,
Room No.333, 3rd Floor,
Nandanam, Chennai – 600 035.

Krishnan Ramasamy,J.,

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W.P.No.30865 of 2024

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