IN THE HIGH COURT of JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.30905 of 2024
and WMP.Nos.33484 & 33485 of 2024

Tvl. Fun Point Food & Amusement,
(Represented by its Proprietor,
Mr.P.R.Sasikumar),
No.F1/172, Jeevananatham Street,
Kallukadai Medu, Erode – 638 001. … Petitioner

Vs.

The Deputy State Tax Officer – 1,
Nethaji Road Circle,
Erode. … Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the files of the respondent herein in FORM GST DRC – 07 with Reference No.: ZD3301240785779 dated 19.01.2024 along with detailed order in GSTIN: 33BMTPS1999A1ZL / 2018-19 dated 19.01.2024, for the assessment period 2018-19 and quash the same.

For Petitioner : Ms.S.Vishnupriya for Mr.Prasad N.

For Respondent : Mrs.K.Vasanthamala,
Government Advocate (Taxes)

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O R D E R

This Writ Petition is filed to call for the records on the files of the respondent herein in FORM GST DRC – 07 with Reference No.: ZD3301240785779 dated 19.01.2024 along with detailed order in GSTIN: 33BMTPS1999A1ZL / 2018-19 dated 19.01.2024, for the assessment period 2018-19 and quash the same.

2.Mrs.K.Vasanthamala, learned Government Advocate, takes notice on behalf of the respondent. By consent of both the parties, the main writ petition is taken up for disposal at the admission stage itself.

3.Challenging the order dated 19.01.2024 in which the respondent has reversed ITC on the ground of alleged mismatch between the GSTR2A and GSTR3B. The petitioner is in possession of certificate in accordance with Board's instructions dated 27.12.2022. The genuineness of the transactions is not in doubt. In such circumstances, the ITC cannot be disallowed on the ground of mere mismatch between the GSTR2A and GSTR3B. Hence the petition.

4.The learned counsel for the petitioner would submit that the petitioner has not been served with a hard copy of the impugned order by the respondent. As the petitioner was unaware of the said notice uploaded in the GST portal, he failed to reply the said Show Cause Notice, which led to the passing of the present impugned order. Further, he would submit that even an impugned order was uploaded in the GST portal and the physical version of such order was not served on the petitioner. The petitioner came to know about the impugned order dated 19.01.2024, only through a phone call received from the respondent for intimation of tax dues and the entire existence of a demand for tax along with interest and penalty. 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 its case and also they agree to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

5.On the other hand, the learned Government Advocate appearing for the respondent would submit that the respondent has uploaded the notices in the GST Online Portal. But the petitioner failed to avail the said opportunity. She has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Further she 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.

6.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and also perused the materials available on record.

7.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 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.

8.For the reasons stated above, this Court is inclined to set aside the impugned orders dated 19.01.2024 passed by the respondent with the following directions:-

> *(i) The impugned order dated 19.01.2024 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of disputed tax amount to the respondent within a period of four weeks from today (15.10.2024) and the setting aside of the impugned order will take effect from the date of payment of the said amount.*
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> *(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of copy of this order.*
>
> *(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same 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.

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

15.10.2024

Index : Yes / No
Internet : Yes / No
Speaking order/Non-speaking order
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To

The Deputy State Tax Officer – 1,
Nethaji Road Circle,
Erode.

KRISHNAN RAMASAMY, J.

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W.P.No.30905 of 2024

15.10.2024