IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2024

Coram:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

W.P.No.31112 of 2024
and W.M.P.Nos.33756 & 33757 of 2024

Paary Sweets and Bakery
Represented by the Proprietor
Mr.P.Balu
No.215/A, Gandhi Road,
Arani, Thiruvannamalai – 632 301.

...Petitioner

Versus

The State Tax Officer (Inspection – V) /
The Commercial Tax Officer,
Office of Joint Commissioner (ST) (Intelligence)
Integrated CT Building Fort Round
Bharathiyar Salai,
Vellore – 632 001.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for records from the file of the respondent in impugned order in Reference No.ZD330524067153M in GSTIN/ID No.33AFIPB0986P1Z5 dated 10.05.2024 passed for the F.Y.2020-2021 and quash the same as erroneous on facts and violative of principles of natural justice.

For Petitioner	:	Mr.R.Ananth
For Respondent	:	Mr.C.Harsha Raj, Additional Government Pleader

ORDER

Mr.C.Harsha Raj, learned Additional Government Pleader takes notice for the respondent.

2. With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

3. The present writ petition has been filed by the petitioner challenging the impugned order dated 10.05.2024 passed by the respondent.

4. The learned counsel for the petitioner submitted that the petitioner has been duly filing the returns and paying all the statutory taxes. On 19.04.2024, the Intelligence Wing Officer had conducted an inspection in the petitioner's premises, pursuant to which, the respondent had issued Form GST DRC-01A & Intimation Notice dated 20.07.2023 and Form GST DRC-01 & Show Cause Notice dated 31.08.2023, stating that on examination of books of accounts, records and documents furnished by the petitioner at the time of inspection, following defects were noticed:

(i) Interest on belated payment of Tax

(ii) Excess claim of ITC – GSTR2A Vs. GSTR3B as per GSTR9

(iii) Reversal of ITC apportionment of Credit and Blocked Credit under Section 17(2)

(iv) Rental Income from shop

(v) Rental Charges paid to Municipality

(vi) Credit Note Received but no reversal made

(vii) ITC availed on Blocked Credit.

By inadvertence, the petitioner's Accountant could not file reply to the Show Cause Notice. Subsequently, the respondent has passed the impugned order dated 10.05.2024. He further submitted that all the aforesaid notices and impugned order uploaded in the “View Additional Notices and Orders” tab of the GST portal and the same were not served to the petitioner by any other mode. Hence, the petitioner was not aware of the proceedings and could not participate in the proceedings. The petitioner came to know about the impugned order only during the last week of August, 2024. He also submitted that prior to the issuance of impugned order, the respondent did not even provide an opportunity of hearing to the petitioner to put forth their case. Therefore, the learned counsel prayed this Court to quash the impugned order.

5. On the other hand, the learned Additional Government Pleader appearing for the respondent submitted that the matter may be remanded back to the respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax amount.

6. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

7. As far as this case is concerned, without providing an opportunity of hearing to the petitioner, the respondent has passed the impugned order, which is in violation of the principles of natural justice. Therefore, this Court is of the opinion that the impugned order is ought to be quashed and an opportunity of personal hearing has to be afforded to the petitioner to establish their case.

8. Considering the facts and circumstances of the case and also, having regard to the submissions made by the learned counsel on either side, this Court issues the following directions:

(i) The impugned order in Reference No.ZD330524067153M in GSTIN/ID No.33AFIPB0986P1Z5 dated 10.05.2024 passed by the respondent is quashed and the matter is remanded back to the respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax amount, within a period of four weeks from the date of receipt of a copy of this order. After making such payment, the petitioner shall produce the payment proof before the respondent.

(ii) It is made clear that quashing of the impugned order will come into effect, only from the date of payment of 10% of the disputed tax amount by the petitioner.

(iii) The petitioner is directed to file their Reply/Objection along with the required documents, if any, within a period of two weeks thereafter.

(iv) On production of aforesaid payment proof, the respondent shall consider the petitioner's Reply/Objection and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, as expeditiously as possible.

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

22.10.2024

mrr

Index: Yes/No

Speaking Order (or) Non-Speaking Order

To

The State Tax Officer (Inspection – V) /
The Commercial Tax Officer,
Office of Joint Commissioner (ST) (Intelligence)
Integrated CT Building Fort Round
Bharathiyar Salai,
Vellore – 632 001.

KRISHNAN RAMASAMY, J.

mrr

W.P.No.31112 of 2024

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