IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2024

Coram:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

W.P.No.31414 of 2024
and W.M.P.Nos.34103 & 34104

Ezhil Enterprises,
Represented by its Proprietor Mr.P.Ponezhil,
No.57, 2nd Street, Kesavapuram,
Minjur, Tiruvallur, Pin – 601 203. ...Petitioner

Versus

The Deputy Commercial Tax Officer,
Ponneri: Tiruvallur,
Integrated Commercial Taxes Office Complex,
D.No.32, Room No.107,
Elephant Gate Bridge Road,
Chennai – 600 003. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent order in Reference Number.ZD331223276322R/2017-18 dated 30.12.2023 and quash the same.

For Petitioner	:	Ms.V.Vijayalakshmi
For Respondent	:	Mr.TNC.Kaushik, Additional Government Pleader

ORDER

Mr.TNC.Kaushik, 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 challenging the impugned order in Reference No.ZD331223276322R/2017-18 dated 30.12.2023 passed by the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is engaged in the business of rendering electrical contract service to Tamil Nadu Electricity Board and allied. The petitioner has been duly filing the returns and paying all the statutory taxes. However, the respondent had issued a Notice in ASMT-10 dated 03.07.2023, alleging that there is a mismatch in GSTR-3B Vs. Form 26 AS filed under Section 73(5) of the TNGST Act, 2017. Subsequently, the respondent has issued a Show Cause Notice in DRC-01 dated 14.08.2023, calling upon the petitioner to file their reply by 14.09.2023 and attend the personal hearing on 28.08.2023. In this regard, a Reminder dated 19.10.2023 was also issued by the respondent. The petitioner's GST consultant who handled the filing of

returns for the petitioner's business had failed to communicate about the proceedings initiated by the respondent, to the petitioner. Hence, the petitioner has not filed any reply to the show cause notice and also, not attended the personal hearing. Finally, the respondent has passed the impugned order dated 30.12.2023. The petitioner came to know about the impugned order only after receiving a phone call from the respondent. Therefore, the learned counsel prayed that the impugned order may be quashed and one final opportunity may be granted to the petitioner to file their reply and put forth their case before the Assessing Officer.

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, the petitioner was not aware of the show cause notice as well as the impugned order issued by the respondent since the petitioner's consultant had failed to communicate about the proceedings, to the petitioner. Hence, the petitioner was unable to file any reply to the show cause notice and also, unable to attend the personal hearing. Hence, this Court is of the opinion that an opportunity has to be afforded to the petitioner to file their reply and establish their case before the Assessing Officer.

8. Considering the facts and circumstances of the case and 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 Number.ZD331223276322R/2017-18 dated 30.12.20223 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 Deputy Commercial Tax Officer,
Ponneri: Tiruvallur,
Integrated Commercial Taxes Office Complex,
D.No.32, Room No.107,
Elephant Gate Bridge Road,
Chennai – 600 003.

KRISHNAN RAMASAMY, J.

mrr

W.P.No.31414 of 2024

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