IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.32008 of 2024
and
W.M.P.Nos.34753 and 34754 of 2024

Tvl.K.K.Enterprises,
Rep. by its Proprietor
Karthikeyan Sivakumar
15,Saminathapuram Bharathidasan
Street, Advent Christian Church,
Vengavasal, Chengalpattu,
Tamilnadu - 600126. ...Petitioner

Vs.

The Deputy State Tax Officer,
Madipakkam Assessment Circle
Commercial Taxes Department
Room No.233-II Floor, Integrated
Commercial Taxes and Registration
Department Building, Anna Salai
(Veterinary Hospital Back Side),
Nandanam, Chennai- 600 035. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in and connected with impugned order in GSTIN:33EGXPS2813E1Z4/2018-19 dated 20.04.2024 issued by the Respondent and quash the same as arbitrary, in violation of principles of natural justice and illegal.

For Petitioner : Mr.R.Sathishsundar

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

ORDER

This Writ Petition has been filed to call for the records of the Respondent dated 20.04.2024 and to quash the same.

2. Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes), takes notice on behalf of the Respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submits that show cause notice dated 12.12.2023 followed by reminders dated 13.03.2023, 21.03.2024 and 03.04.2024 were issued to the Petitioner and since it was uploaded in the "View additional Notices and Orders" tab, the Petitioner was not aware of the same and hence failed to file reply in time. The Petitioner came to know of the

said notices only after getting a call from the Department on 12.04.2024 regarding the aforesaid notices. Thereafter, on the same day, the Petitioner filed a reply on 12.04.2024, requesting further time of 15 days for filing reply. But the Respondent, without considering the same, passed the impugned assessment order dated 20.04.2024 demanding tax along with interest and penalty for the Assessment Year 2018-19 and the same was also uploaded in the GST portal. The Petitioner came to know of the said order belatedly.

5. Further, she would submit that impugned assessment order came to be passed without affording an opportunity of hearing to the Petitioner and therefore the same is in violation of principles of natural justice and therefore prays to set aside the same.

6. The learned Additional Government Pleader (Taxes) appearing for the Respondent submitted that though the Show Cause Notice followed by reminder notices were issued to the Petitioner and the opportunity of personal hearing was also granted, the Petitioner simply sought time to file reply and therefore impugned assessment order came be passed. He therefore prayed for appropriate orders.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the Respondent and also perused the materials available on record.

8. In the present case, since the Show Cause Notice along with reminder notices were uploaded in the GST Portal, the Petitioner was not aware of the said notices issued by the Respondent. The Petitioner came to know of the said notices after getting call from the Respondent-Department and immediately he sought time to file reply. But, the Respondent without considering the same has proceeded to pass the exparte order.

9. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

10. In the case on hand, the impugned order was passed without giving opportunity of personal hearing to the Petitioner. Hence, this Court is of the view that the impugned order passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned assessment order dated 20.04.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein 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 to the Respondent within a period of ***four weeks*** from the date of receipt of a copy of this order and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The Petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(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.

11. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

28.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

The Deputy State Tax Officer,
Madipakkam Assessment Circle
Commercial Taxes Department
Room No.233-II Floor, Integrated
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Department Building, Anna Salai
(Veterinary Hospital Back Side),
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Krishnan Ramasamy,J.,

arr

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