IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.31265 of 2024
and
W.M.P.Nos.33899 & 33900/2024

Tvl. Sowmya Traders,
rep. by its Proprietor,
Mrs.Velmurugan Kavitha. ...Petitioner

Vs.

1. The State Tax Officer,
   Palladam 2 Assessment Circle,
   Tamil Nadu.

2. The Assistant Commissioner (ST)
   Palladam – II Circle, Tiruppur.

3. The Branch Manager,
   South India Bank,
   Pappampatti Branch,
   6/82, Kallapalayam Road,
   Pappampatti, Coimbatore – PIN – 641016. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records from the files of the first respondent in GSTIN :

33BGTPK7055B1ZD/2017-18 dated 08.12.2023 and consequential order passed by the second respondent in GSTIN : 33BGTPK7055B1ZD/2024/A1 dated 22.05.2024 and to quash the same and consequently, to direct the second respondent to lift the attachment of the petitioner's bank accounts No.0193073000000749 (M/s.Sowmya Traders) and 0193053000010718(Kavitha V) held by the petitioner in the third respondent bank.

For Petitioner : Mr.A.N.R.Jayapratha
For Respondents : Ms.Amirta Poonkodi Dinakaran
Government Advocate (T)

<u>Order</u>

With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the first respondent dated 08.12.2023 and consequential order passed by the second respondent dated 22.05.2024 and to quash the same and consequently, to direct the second respondent to lift the attachment of the petitioner's bank accounts held in the third respondent bank.

3. Mr.A.N.R.Jayaprathap, learned counsel for the petitioner would submit that the show cause notice, reminder notice and other communications, which culminated in the impugned orders were uploaded in the GST Portal, under the column "Additional Notices and Orders" and the petitioner was not aware of the notices being uploaded in the GST Portal under the said column, as the petitioner used to verify their 'Dashboard' and the column, "View Notices and Orders', under which tab, the impugned order dated 08.02.2024 was not uploaded, therefore, petitioner could file reply nor appear before the respondent on the date fixed for personal hearing. Therefore the learned counsel that the attitude of the petitioner in not filing reply or non-appearance before the respondent-Department is neither wilful nor wanton but only due to bona fide reasons

3.1 Therefore, learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and are liable to be set aside, as the petitioner has not been afforded with any opportunity of personal hearing. Further, the learned counsel would submit that the petitioner has already deposited 50% of the disputed tax, therefore, prays for setting aside the impugned orders.

4. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (T) for the respondents 1 and 2 fairly submitted that since the petitioner had already deposited 50% of the disputed tax, the prayer sought for by the petitioner may be considered.

5. I have given due considerations to the submissions made on either side and perused the materials available on record. Considering the nature of relief to be granted, this Court is of the view that notice to the third respondent is not necessary and the same is dispensed with.

6. On perusal of records, it is crystal clear that the impugned orders came to be passed against the petitioner, behind their back, as the respondent-Department has not taken any steps to serve the show cause notices/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, that too, not in the usual tabs, which most of the taxpayers used to view, i.e. View Notices and orders", but were uploaded under the tab " Additional Notices and orders", hence, the petitioner, was not aware any such notices, and only when the respondent-Department took steps for initiating the recovery proceedings, the petitioner became aware of the existence of tax due, interest & penalty by virtue of the impugned order; and that, since the petitioner is a small concern, obviously, there wouldn't have been any occasion for them to view the GST Portal then and there.

7. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned orders and this is sufficient to hold that the impugned orders are nothing but ex parte orders, which are unsustainable in the eye of law and the notices/communications, which were merely uploaded to the GST Portal, can no longer be deemed to be a sufficient service in terms of Section 169 of the Act.

8. In the light of the above findings, this Court is inclined to set aside the impugned orders.

9. Accordingly, this Court passes the following orders/direction:-

i) The impugned order passed by the first respondent dated 08.12.2023 and the consequential order passed by the second respondent 22.05.2024 are set aside and the matter is remanded back to the first respondent for fresh consideration.

ii) The petitioner is directed to file reply along with supportive documents within a period of three weeks from the date of receipt of a certified copy of this order.

iv) Thereupon, the first respondent is directed to consider the same and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner, and after hearing the petitioner in full, shall decide the matter in accordance with law.

v) As the petitioner has already deposited 50% of the disputed tax, the respondent concerned is directed to pass appropriate orders towards defreezure of the petitioner's bank account forthwith.

10. 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

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Krishnan Ramasamy,J.,

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