IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.31241 of 2024 &
W.M.P.Nos.33873 and 33875 of 2024

K.S.Velmurugan ... Petitioner

Vs.

1. **The Assistant Commissioner (ST)**
Office of the Assistant Commissioner,
Thiruvanmiyur Assessment Circle,
Thiruvanmiyur, Chennai-600035.

2. **The Deputy Commercial Tax Officer (ST),**
Office of the Deputy Commercial tax officer,
Thiruvanmiyur, South-III, Chennai South,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records and quash the order passed by the 2nd Respondent under Section 73 of CGST Act in Form GST DRC-07 bearing Ref. No.:ZD330424149564E dated 18.04.2024 and consequently restrain the 1st and 2nd Respondent from proceedings with the recovery pursuant to the above Impugned order under Form GST DRC-07 bearing Ref.

No.ZD33042414956E dated 18.04.2024 and consequentially restrain the 1st and 2nd Respondents from proceeding with recovery pursuant to the above Impugned order under Form GST DRC-07 bearing Ref.No.ZD330424149564E dated 18.04.2024 passed by the 2nd Respondent within the time frame as may be fixed by this Court.

For Petitioner : Mr.P.Sathyanarayanan

For Respondents : Mrs.G.Nanmaran
Special Government Pleader (T)

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ORDER

This writ petition has been filed by the Petitionerchallenging the orders of the 1st Respondent dated 18.04.2024 and to quash the same and consequently restrain the 1st and 2nd Respondents from proceedings with the recovery pursuant to the above Impugned order under Form GST DRC-07 bearing Ref. No.ZD33042414956E dated 18.04.2024 and consequentially restrain the 1st and 3rd Respondents from proceeding with recovery pursuant to the above Impugned order under Form GST DRC-07 bearing Ref.No.ZD330424149564E dated 18.04.2024 passed by the 2nd Respondent within the time frame as may be fixed by this Court.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) takes notice on behalf of the Respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the Petitioner would submit that in the present case, initially the 2nd Respondent has issued Show Cause Notice to the Petitioneron 30.01.2024, followed by three reminder notices dated 14.03.2024, 12.04.2024 and 17.04.2024 and the same were uploaded in the GST portal. Since the consultant of the Petitioner had not informed about the said proceedings uploaded in the GST portal, the Petitioner was not aware of the same and hence they failed to file his reply. Under these circumstances, the impugned assessment order dated 18.04.2024 came to be passed by the 2nd Respondent demanding tax along with penalty and interest for the Assessment Year 2018-2019 and the same

was also uploaded in the GST Portal. The Petitioner came to know of the aforesaid notices as well as impugned order only after the receipt of the recovery notice dated 25.09.2024 from the 1st Respondent.

5.Further, he would submit that impugned 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. On the other hand, the learned Government Advocate (Taxes) would submit that the Respondents uploaded the show cause notice as well as the reminder notices in the GST Online Portal. But the Petitioner failed to submit reply to substantiate its case and therefore the impugned assessment order came to be passed.

7. In reply, the learned counsel for the Petitionerwould fairly submit that the Petitioner is now ready and willing to pay 10% of the disputed tax liability made by the Respondent in the event of providing

an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Government Advocate (Taxes) has no serious objection.

8. Heard the learned counsel for the Petitionerand the learned Government Advocate (Taxes) for the Respondents and also perused the materials available on record.

9. In the present case, since the show cause notice as well as the reminder notices were uploaded in the GST Portal, the Petitioner was not aware of the same and therefore he is not in a position to file reply for the show cause notice.

10. Further, it appears that no opportunity of personal hearing was provided to the Petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned orders are 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 order dated 18.04.2024 passed by the 1st Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 18.04.2024 is set aside and the matter is remanded to the Respondents for fresh consideration on condition that the Petitionershall pay 10% of disputed tax to the Respondents 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.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment made on the bank account of the Petitioner cannot survive any longer and hence, it is lifted. As a sequel, the Respondent is directed instruct the concerned bank viz., ***City Union Bank, Karapakkam Branch, Chennai*** to release the attachment on the bank account of the petitioner, immediately upon the production of proof with regard to the payment of 10% of the demand amount by the Petitioner as stated above.

(v) If any Garnishee order is issued by the Respondents to the Ministry of Defence, Heavy Vehicles Factory, Avadi, Chennai, the said Garnishee Order shall stand revoked upon the payment of 10% as ordered by this Court.

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

19.10.2024

Speaking/Non-speaking order

Index : Yes / No
Neutral Citation : Yes / No
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To

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2. **The Deputy Commercial Tax Officer (ST),**
   Office of the Deputy Commercial tax officer,
   Thiruvanmiyur, South-III, Chennai South,
   Chennai.

KRISHNAN RAMASAMY.J.,

arr

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