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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.32029 of 2024 &
W.M.P.Nos.34767 and 34769 of 2024

M/s.Ganga Chemicals,
Rep. by its Partner R.Aarthi,
No.169, G.S.T.Road, Vandalur,
Chennai 600 048. ... Petitioner

Vs.

Assistant Commissioner (ST),
Thirulazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirulazhukundram. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the Respondent passed GSTIN:33AACFG6580B1ZS/2019-20 and consequential order u/s 73 and summary of the Order i Form GST DRC-07 having Ref.No.ZD330824108525H all dated 13.08.2024 for the FY 2019-20 and quash the same as illegal.

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For Petitioner : Ms.P.Aruna Chopda

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

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ORDER

This writ petition has been filed by the petitioner challenging the orders of the Respondent dated 13.08.2024 for the FY 2019-20 and to quash the same.

2. Mr.T.N.C.Kaushik, 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 admission stage itself.

4. The learned counsel for the Petitioner would submit that in the present case, initially the Respondent has issued Show Cause Notice to the Petitioner on 21.05.2024. Since the same was uploaded in the "Additional Notices and Orders" column in the GST portal, the

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Petitioner's consultant had not noticed the same and hence failed to file the reply. Under these circumstances, the impunged assessment order along with summary order dated 13.08.2024 came to be passed by the Respondent demanding tax along with penalty and interest for the Assessment Year 2019-2020. The Petitioner came to know of the Show Cause Notice as well as impugned order belatedly.

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 Additional Government pleader (Taxes) would submit that the Respondent uploaded the show cause notice followed by reminder notices in the GST Online Portal. But the Petitioner failed to submit reply to substantiate its case and therefore the impugned assessment order along with summary order came to be passed.

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7. In reply, the learned counsel for the Petitioner would 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 Additional Government Pleader (Taxes) has no serious objection.

8. 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.

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,

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this Court is of the view that the impugned order is 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 orders dated 13.08.2024 passed by the Respondent. According, this Court passes the following order:-

(i) The impugned orders dated 13.08.2024 are 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

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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. 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:

Assistant Commissioner (ST),
Thirulazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirulazhukundram**.**

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KRISHNAN RAMASAMY.J.,

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