IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.31272 of 2024
and
W.M.P.No.33903 & 33905 of 2024

Tvl. Sri Ranganatha & Company,
rep. by its Propritrix,
Mrs. Meenakshi. ...Petitioner

Vs.

The Assistant Commissioner
J.J.Nagar Assessment Circle,
Central – II, Chennai. ...Respondent

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 of the respondent in GSTIN : 33AXZPM2598P1Z8/2018-19 dated 23.04.2024 and to quash the same and consequently, to direct the respondent to give an opportunity of personal hearing.

For Petitioner : Mr.P.R.Kumar

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

Order

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 dated 23.04.2024 passed by the respondent and to quash the same.

3. Mr.P.R.Kumar, learned counsel for the petitioner would submit that the petitioner is a registered dealer under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and an assessee on the files of the respondent; that the petitioner has been filing returns even since the date of registration under the TNGST Act, however, subsequent to the introduction of the GST Act in the midstream (i.e.) from 01.07.2017, the petitioner is not well accustomed to the procedure to be adopted under the new enactment, hence, he engaged a Consultant for filing returns; that for the FY 2018-19, the petitioner has been issued with a show cause notice, unfortunately, the Consultant did not inform the petitioner about the proceedings hence, the petitioner failed to note those notices and also could not submit reply to the notices. However, the respondent, without hearing the petitioner passed the impugned order, confirming the proposals contained in the show cause notice.

3.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside. However, the learned counsel would submit that in the event, this Court is inclined to set aside the impugned order, the petitioner is agreable to pay 10% of the disputed tax amount and hence, prayed for appropriate orders.

4. Mr.C.Harsha Raj, learned Additional Government Pleader (T)**),** who takes notice on behalf the respondent fairly submitted that if the petitioner is ready and willing to deposit 10% of the disputed tax, then, 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.

6. The petitioner is an assessee on the files of the respondent registered under the provisions of the Goods and Services Act 2017. The petitioner has been filing returns even since the date of registration under the GST Act, however, subsequent to the introduction of the GST Act in the midstream (i.e.) from 01.07.2017, there was considerable ambiguity in the procedure to be adopted under the new enactment, during which point of time, the petitioner has been issued with the show cause notice and other communications, which the petitioner was not at all aware.

6.1 The petitioner, being a small dealer, engaged in the business of buying and selling iron and steel is not well accustomed with the new procedure adopted under the new GST Act, therefore, the petitioner was not aware of any such notices, and even the Consultant, whom the petitioner has engaged for filing of the monthly returns, failed to inform the petitioner about the proceedings. Hence, the petitioner failed to note all the notices/communications and could not file reply, which culminated in the impugned order. However, the respondent, without hearing the petitioner, passed the impugned order, confirming the proposals contained in the show cause notice.

6.2 Thus, it is crystal clear that the impugned order came to be passed against the petitioner, without even providing an opportunity of personal hearing to the petitioner, which is in violation of principles of natural justice. This is sufficient to hold that the impugned order is nothing but ex parte order, which is unsustainable in the eye of law. Hence, this Court is inclined to set aside the impugned order.

7. Accordingly, this Court passes the following orders:-

i) The impugned order dated 23.04.2024 is set aside and the matter is remanded back to the respondent for fresh consideration.

ii) While remanding the matter, it is made clear that the impugned order is set aside subject to the condition that the petitioner deposits 10% of the disputed tax within a period of four weeks from the date of receipt of a certified copy of this order.

iii) Thereafter, the petitioner shall file a reply within three weeks and after the filing of reply, the respondent is directed to provide a personal opportunity of hearing by issuing a clear 14 days notice and after hearing the petitioner in full, shall pass necessary orders in accordance with law.

8. 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

To
The Assistant Commissioner
J.J.Nagar Assessment Circle,
Central – II, Chennai.

Krishnan Ramasamy,J.,

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