IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.31290 of 2024
and
W.M.P.Nos.33933 & 33975 of 2024

Tvl. Kumar Agencies,
rep. by its Proprietor, Mrs. S.Aruna. ...Petitioner

Vs.

1. The State Tax Officer,
   Arani Assessment Circle,
   Fort West Street Near Library,
   Arni – 632 301,
   Thiruvannamalai District.

2. The Branch Manager,
   Indian Bank, 30 -Vadiraja Street,
   Kosapalayam, Arani. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the first respondent's proceedings in order in GSTIN : 33BWOPA7912A1ZZ/2018-19 dated 29.04.2024 and to quash the same as arbitrary.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (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 passed by the first respondent dated 29.04.2024 and to quash the same as arbitrary.

3. Mr.D.Vijayakumar, learned counsel for the petitioner would submit that all the notices/communications, which culminated in the impugned order were merely uploaded in the GST Portal under the column, "View of additional notices and orders", unfortunately, the Consultant, who was engaged by the petitioner for filing returns, failed to note those notices and intimate the petitioner, since the Consultant was not only working for the petitioner but also working for other taxpayers, hence, the petitioner was not aware of those notice and file reply to those notices, however, since the petitioner failed to file reply, the first respondent, without giving any opportunity of personal hearing to the petitioner, confirmed the proposals contained in the show cause notice and passed the present impugned order.

3.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and 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 order

4. Mr.V.Prashanth Kiran, learned Government Advocate (T) for 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. Considering the nature of relief to the granted, this Court is of the view that notice to the second respondent-Bank is not necessary and the same is dispensed with.

6. On perusal of records, it is crystal clear that the impugned order came to be passed against the petitioner, behind their back, as the respondent-Department has not taken any steps to serve any notices/communications, which culminated in the impugned order directly through physical mode of service and made it available only in the GST Portal under the "View of additional notices and orders' column, hence, the petitioner was not aware of any such notices, and only when the respondent-Department initiated recovery proceedings against the petitioner, the petitioner became aware of the impugned order.

7. Thus, the first respondent passed the impugned order without affording any opportunity of hearing to the petitioner, which is in total violation of principles of natural justice. Therefore, this Court is inclined to set aside the impugned order.

8. Accordingly, this Court passes the following orders/directions:-

i) The impugned order dated 29.04.2024 is set aside and the matter is remanded back to the first 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 copy of this order.

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

iv) The respondent-Department also, upon production of proof with regard to payment of 10% of the disputed tax made by the petitioner, is directed to pass appropriate orders towards defreezure of the petitioner's bank account forthwith.

9. 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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