IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.31283 of 2024
and
W.M.P.No.33917 & 33918 of 2024

Tvl. Nejam Ahamd Contractors,
rep. By its Prop. Nejam Ahamd ...Petitioner

Vs.

The Deputy State Tax Officer – 1
Pollachi (West) Assessment Circle
Pollachi – 642 001. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceeding in GSTIN : 33AYXPA8116A1ZP/2020-21 dated 23.05.2024 and to quash the same as illegal

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.G.Nanmaran
Special Government Pleader

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 respondent in his proceeding dated 23.05.2024 and to quash the same.

3. Mr.S.Ramanathan, learned counsel for the petitioner would submit that the petitioner could not file reply to the show cause notice issued by the respondent, as the petitioner has been filing returns only through Part Time Accountant, hence, the petitioner has no knowledge as to how to access the GST portal and give response, and however, the respondent, without giving any opportunity of personal hearing, 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. Further, it is submitted that the respondent has already initiated recovery proceedings against the petitioner and recovered 70% of disputed tax from the petitioner, therefore, prays for setting aside the impugned order.

4. Mr.G.Nanmaran, learned Special Government Pleader for the respondent fairly submitted that since 70% of disputed tax amount has already been recovered from the petitioner, the prayer sought for by the petitioner may be considered, if the Court feels it as deems fit.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

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 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 under the Additional Notice column, hence, the petitioner, was not aware any such notices, and only when the respondent-Department contacted the petitioner over phone and demanded tax, the petitioner became aware of the existence of tax due, interest & penalty by virtue of the impugned order; and that, as the petitioner has been filing returns only through Part Time Accountant, the petitioner has no knowledge as to how to access the GST portal and give response, however, the respondent, without giving any opportunity of personal hearing to the petitioner, proceeded to confirm the proposals contained in the show cause notice and passed the present impugned order.

7. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned order and this is sufficient to hold that the impugned order is nothing but ex parte order, which is 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.

8. In the light of the above findings, this Court is inclined to set aside the impugned order 23.05.2024 issued by the respondent as the same suffers from violation of principles of natural justice.

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

i) The impugned order dated 23.05.2024 is set aside and the matter is remanded back to the 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 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.

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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To
The Deputy State Tax Officer – 1
Pollachi (West) Assessment Circle
Pollachi – 642 001.

Krishnan Ramasamy,J.,

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W.P.No.31283 of 2024

21.10.2024