IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2024

Coram:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

W.P.No.31413 of 2024
and W.M.P.Nos.34101 & 34102 of 2024

M/s.Vink Wall Decors
Rep. by its Proprietrix
Smt.V.Kalamani
46/624, Chinnathambi Street,
Pooluvapatti,
Coimbatore – 641 101.

...Petitioner

Versus

The Deputy State Tax Officer,
Perur Assessment Circle,
Coimbatore.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent in GSTIN: 33AZKPK2524NIZ7/2018-19 and quash the proceeding dated 26.04.2024 passed therein and further, direct the respondent to grant sufficient opportunity to the petitioner to file reply and grant personal hearing to the petitioner before passing any order of assessment.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.TNC.Kaushik,
Additional Government Pleader

ORDER

Mr.TNC.Kaushik, learned Additional Government Pleader takes notice for the respondent.

2. With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

3. The present writ petition has been filed challenging the impugned proceedings in GSTIN: 33AZKPK2524NIZ7/2018-19 dated 26.04.2024 passed by the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is a painting contractor who has been duly filing the returns and paying all the statutory taxes. However, the respondent had issued a Show Cause Notice dated 18.12.2023, stating that on scrutinizing of the returns filed by the petitioner for the year 2018-19, it was noticed that there is a difference

between GSTR-3B and GSTR-1 and advising the petitioner to pay the tax amount along with applicable interest and penalty. Thereafter, the respondent has issued the impugned order dated 26.04.2024, confirming the said show cause notice. He further submitted that both the show cause notice and the impugned order were uploaded in the "Additional Notices" tab of the GST portal and the same were not served to the petitioner through post or any other mode. Moreover, the petitioner's GST consultant had failed to check the GST portal properly as he was sick. Hence, the petitioner was not aware of the proceedings and could not participate in the proceedings. It is to be noted that prior to the issuance of impugned order, the respondent did not even provide an opportunity of hearing to the petitioner to put forth their case. Therefore, the learned counsel prayed this Court to quash the impugned order.

5. On the other hand, the learned Additional Government Pleader appearing for the respondent submitted that the matter may be remanded back to the respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax amount.

6. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

7. As far as this case is concerned, without providing an opportunity of hearing to the petitioner, the respondent has passed the impugned order, which is in violation of the principles of natural justice. Therefore, this Court is of the opinion that the impugned order is ought to be quashed and an opportunity of personal hearing has to be afforded to the petitioner to establish their case.

8. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court issues the following directions:

(i) The impugned order in GSTIN: 33AZKPK2524NIZ7/2018-19 dated 26.04.2024 passed by the respondent is quashed and the matter is remanded back to the respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax amount, within a period of four weeks from the date of receipt of a copy of this order. After making such payment, the petitioner shall produce the payment proof before the respondent.

(ii) It is made clear that quashing of the impugned order will come into effect, only from the date of payment of 10% of the disputed tax amount by the petitioner.

(iii) The petitioner is directed to file their Reply/Objection along with the required documents, if any, within a period of two weeks thereafter.

(iv) On production of aforesaid payment proof, the respondent shall consider the petitioner's Reply/Objection and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, as expeditiously as possible.

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

22.10.2024

mrr
Index: Yes/No
Speaking Order (or) Non-Speaking Order

To

The Deputy State Tax Officer,
Perur Assessment Circle,
Coimbatore.

KRISHNAN RAMASAMY, J.

mrr

W.P.No.31413 of 2024

22.10.2024