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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.31329 of 2024
and
W.M.P.Nos.33988 & 33990 of 2024

M/s. Spark Automation
rep. By its Proprietor, Nadarajan Ruby. ...Petitioner

Vs.

1. The Deputy State Tax Officer,
Sriperumbudur Assessment Circle,
No.4/109, Bangalore – Chennai High Way
Varadarajapuram, Nazrathpet, Chennai – 600 123.

2. The Deputy Commissioner (ST)
Kancheepuram Zone,
1st Floor, Commercial Taxes Building,
Collectorate Campus, Kancheepuram – 631 501. ...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 impugned order passed by the first respondent against the petitioner vide GSTIN : 33AZLPR1672F1Z9 dated 27.04.2024 for the assessment year 2018-19, to quash the same as illegal.

For Petitioner : Mr.K.M.Malarmannan

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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 against the petitioner dated 27.04.2024 for the assessment year 2018-19, to quash the same as illegal.

3. Mr.K.M.Malarmannan., learned counsel for the petitioner would submit that the petitioner has been issued with a show cause notice, however, since the same was not served on the petitioner through physical mode but were only uploaded in the GST Portal under the column, "View of additional notices and orders", the petitioner could not view the same and reply to the show cause notice, however, since the petitioner failed to file reply to the show cause notice issued by the first respondent, the first respondent, without giving any opportunity of personal hearing to the petitioner, confirmed the proposals contained in the show cause notice and

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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 orders.

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.

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

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respondent-Department 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 "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 27.04.2024 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

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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 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, 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.

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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