IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2024

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

W.P.No.31429 of 2024
and W.M.P.Nos.34121, 34122 & 34123 of 2024

Tvl.G.Shankar Civil Contractor
Represented by its Proprietor,
Govindasamy Shankar,
47, Kotta Mitta,
Modikuppam, Gudiyatham,
Vellore, Tamil Nadu – 632 602.

...Petitioner

Versus

1.State Tax Officer,
Gudiyatham (East),
Vellore, Tamil Nadu.

2.State Bank of India,
Represented by its Branch Manager,
15, Railway STN.RD,
Kondasamudram,
Gudiyatham – 632 602.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 1st respondent order dated 07.09.2023 GSTIN: 33BQZPS9668A1Z1/2022-23 and consequential recovery notice in Form GST-DRC-13 dated 30.07.2024 quash the same.

For Petitioner : Mr.S.Srisankar
For Respondent – 1 : Mr.V.Prashanth Kiran,
Government Advocate (Tax)

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate (Tax) takes notice for the first respondent.

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

3. The relief sought by the petitioner herein is to call for the records of the order passed in GSTIN: 33BQZPS9668A1Z1/2022-23 dated 07.09.2023 and consequential recovery notice issued in Form GST-DRC-13 dated 30.07.2024 by the first respondent and quash the same.

4. The case of the petitioner is that he is a government contractor and he has been promptly filing the returns and paying all the statutory taxes and duties. While so, the Commercial Tax Officer, Gudiyatham (East), Vellore had issued a Show Cause Notice dated 25.04.2023 to the petitioner.

Thereafter, the first respondent had passed an order in GSTIN: 33BQZPS9668A1Z1/2022-23 dated 07.09.2023, directing the petitioner to pay a sum of Rs.11,64,564/- by 07.11.2023. That apart, the first respondent had also issued a Bank Attachment Notice in Form GST-DRC-13 dated 30.07.2024, directing the petitioner to pay a sum of Rs.12,98,378/- to the Government. The orders and notices have been uploaded in the "View Additional Notices" tab of the GST portal. The petitioner came to know about the Bank Attachment Notice and the order dated 07.09.2023 passed by the first respondent, only on 30.07.2024. Therefore, the aggrieved petitioner has knocked the doors of this Court with the present writ petition.

5. The learned counsel for the petitioner submitted that the orders and notices were uploaded in the "View Additional Notices" tab of the GST portal. Since the petitioner's accountant is not familiar with GST portal, the petitioner was not aware of the proceedings and he was unable to reply to the Show Cause Notice. He further submitted that without even providing any opportunity to the petitioner to reply to the show cause notice and attend a personal hearing to put forth his case, the first respondent has passed the

impugned order and issued the Bank Attachment Notice. Therefore, the learned counsel prayed this Court to quash the impugned order and recovery notice.

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

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Tax) appearing for the first respondent and perused the materials available on record.

8. As far as this case is concerned, prior to the issuance of impugned order and Bank Attachment Notice, the first respondent did not afford any opportunity to the petitioner neither to reply to the Show Cause Notice nor to attend a personal hearing to establish his case, which is in violation of the principles of natural justice. Therefore, this Court is of the opinion that the impugned order is liable to be quashed and it is just to afford an opportunity

to the petitioner to establish his case.

9. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court feels that it would be appropriate to issue the following directions:

(i) The order passed by the first respondent in GSTIN: 33BQZPS9668A1Z1/2022-23 dated 07.09.2023 is quashed and the matter is remanded back to the first respondent for fresh consideration on condition that the petitioner shall pay 10% of the disputed tax amount to the first respondent, 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 first 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 his Reply/Objection along with the required documents, if any, within a period of two weeks thereafter.

(iv) On production of aforesaid payment proof, the first 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.

(v) Since the impugned order itself has been quashed, the attachment of the petitioner's Bank Account cannot survive any longer. Hence, the attachment of petitioner's Bank Account is hereby ordered to be lifted. As a sequel, the petitioner is directed to produce a copy of the proof of payment of 10% of the disputed tax amount before the second respondent and on production of the same, the second respondent shall de-freeze the petitioner's Bank Account immediately.

10. 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

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

1.State Tax Officer,
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2.State Bank of India,
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15, Railway STN.RD,
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KRISHNAN RAMASAMY, J.

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