IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2024

Coram:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

W.P.No.31475 of 2024
and W.M.P.Nos.34197 & 34198 of 2024

G Enterprizes
Rep. by its Proprietor G.Loganathan
5/246.2, Forest Road, Sathiyamangalam,
Erode, Tamil Nadu – 638 504.
GSTIN: 33AEFPL6943L1Z7

...Petitioner

Versus

The Deputy State Tax Officer – II,
Office of the Deputy Commercial Tax Officer,
Sathyamangalam, Erode.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the impugned proceedings of the respondent in the impugned order in Form GST DRC-07 dated 18.03.2024 vide GSTN: 33AEFPL6943L1Z7/2018-19 along with consequential order under Section 73 bearing Ref.No.ZD3303241023631 dated 18.03.2024 for the tax period 2018-19, quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.G.Nanmaran,
Special Government Pleader

ORDER

Mr.G.Nanmaran, learned Special 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 assessment order in Form GST DRC-07 dated 18.03.2024 bearing GSTN: 33AEFPL6943L1Z7/2018-19 along with consequential order bearing Ref.No.ZD3303241023631 dated 18.03.2024 passed by the respondent.

4. The learned counsel for the petitioner submitted that the petitioner has been duly filing the returns and paying all the statutory taxes. However,

on scrutinizing the returns filed by the petitioner for the period 01.04.2018 to 31.03.2019, it was noticed that the petitioner has not declared the correct tax liability while filing the annual returns in GSTR-09. Hence, the respondent vide Show Cause Notice in Form GST DRC-01 dated 26.12.2023, proposed a liability totaling at Rs.32,22,980/- and calling upon the petitioner to file their reply by 25.01.2024 and appear for personal hearing on 03.01.2024. The petitioner had limited knowledge of the computer and the GST portal. Hence, the petitioner had appointed a part-time Accountant for handling the filing of returns for their business, but, the petitioner's Accountant had failed to notice the show cause notice and reply to the same. Since there was no reply from the petitioner, the respondent has issued the impugned assessment order dated 18.03.2024, upholding the show cause notice, imposing a tax demand totaling at Rs.32,22,980/-. The impugned proceedings initiated by the respondent for the period 2018-19 is barred by limitation under Section 73 of CGST Act, 2017. Therefore, the learned counsel prayed that the impugned order may be quashed and an opportunity may be provided to the petitioner to file their reply and put forth their case before the Assessing Officer.

5. On the other hand, the learned Special 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 Special Government Pleader appearing for the respondent and perused the materials available on record.

7. As far as this case is concerned, the petitioner was not aware of the show cause notice as well as the impugned order issued by the respondent and hence, the petitioner was unable to file any reply to the show cause notice and also, unable to attend the personal hearing. But, the petitioner is now praying for an opportunity to file their reply and establish their case before the Assessing Officer.

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 assessment order in Form GST DRC-07 dated 18.03.2024 bearing GSTN: 33AEFPL6943L1Z7/2018-19 along with consequential order bearing Ref.No.ZD3303241023631 dated 18.03.2024 passed by the respondent are 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 orders 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 – II,
Office of the Deputy Commercial Tax Officer,
Sathyamangalam, Erode.

KRISHNAN RAMASAMY, J.

mrr

W.P.No.31475 of 2024

22.10.2024