IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.31600 of 2024
and
W.M.P.Nos.34350 & 34351 of 2024

Tvl. Ellumalaiyan Transport,
Rep. by its Proprietor, Shri. Janakiraman Sakthivel.

...Petitioner

Vs.

The State Tax Officer (FAC)
Tiruvallur Assessment Circle
4/109, Integrated Goods and Services Taxes Building,
2nd Floor Chennai – Bangalore Highway,
Nazarathpettai, Chennai – 600 123. ...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 records relating to the impugned proceeding bearing Reference No.33GHFPS4309C1ZJ/2018-19 dated 25.04.2024 along with summary of the order in Form GST DRC-07 dated 26.04.2024 passed by the respondent and to quash the same as arbitrary.

For Petitioner : Mr.G.Natarajan
For Respondent : 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 impugned proceeding dated 25.04.2024 along with summary of the order in Form GST DRC-07 dated 26.04.2024 passed by the respondent and to quash the same as arbitrary.

3. Mr.G.Natarajan, learned counsel for the petitioner would submit that on receipt of show cause notice issued by the respondent dated 12.08.2024, the petitioner filed a reply dated 18.11.2023, providing a detailed explanation, however, the respondent, without considering the said reply, passed the impugned order, thereby, confirming the proposals contained in the show cause notice and also recovered 50% of the impugned demand by virtue of the impugned proceedings.

4. Therefore, the learned counsel would submit that the impugned orders are highly arbitrary and suffers from gross violation of principles of natural justice and liable to be aside.

5. Mr.V.Prashanth Kiran, the learned Government Advocate (T) for the respondent fairly submitted that since 50% of the disputed tax has already been recovered from the petitioner, the prayer sought for by the petitioner may be considered and appropriate orders may be passed.

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

7. On perusal of records, it is seen that the petitioner has been issued with a show cause notice dated 12.08.2024, stating that the petitioner has made a taxable supply of a net turnover of Rs.66,77,000/- for which, short payment of tax @ 18% has been proposed to be demanded along with interest/penalty; that though the petitioner, on receipt of such notice, filed a reply dated 18.11.2023 stating that the service of hiring of vehicle for transportation is exempted from payment of tax, hence, the petitioner assumed that the same need not be reported in the GST returns and according filed only NIL returns, however, the respondent, without considering the reply in a proper perspective by disregarding the same, and oral submissions made during the personal hearing, erroneously observed that the petitioner failed to appear for the personal hearing and also proceeded to confirm the impugned demand. Thus, it is crystal clear that the impugned order is nothing but total non-application of mind and also suffers from violation of principles of natural justice. Therefore, this Court is inclined to set aside the impugned orders.

8. Accordingly, this Court passes the following orders/directions:-

i) The impugned orders dated 25.04.2024 and the summary of the order dated 26.04.2024 are set aside and the matter is remanded back to the respondent for fresh consideration.

ii) The respondent is directed to consider the reply filed by the petitioner and thereafter, shall 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.

iii) In the event, the petitioner intends to file any additional reply, the same shall be filed within a period of two weeks from the date of receipt of a copy of this order, which shall also be considered by the respondent before passing the final order.

9. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.10.2024

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Index : yes/no
Neutral Citation : yes/no

To

The State Tax Officer (FAC)
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Krishnan Ramasamy,J.,

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