IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.32246 of 2024
and
W.M.P.Nos. 35031 & 35033 of 2024

M/s. Balamurugan Times,
rep. by its Proprietor
No.66, Officers Line,
Vellore – 632 001. ...Petitioner

Vs.

1. The Assistant Commissioner (ST)
   Vellore (South) Assessment Circle, Vellore.

2. The Commercial Tax Officer,
   Vellore (South) Assessment Circle,
   Vellore. ...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 second respondent in his proceedings in Ref:No.ZD331223290028N, and to quash the Form GST DRC-07 Summary of the Order dated 31.12.2023 issued therein for the tax period July 2017 to March 2018.

For Petitioner : Mr.P.V.Sudakar
For Respondent : Mr.G.Nanmaran
Special Government Pleader

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 Summary of the Order dated 31.12.2023 passed by the second respondent and to quash the same.

3. Mr.P.V.Sudakar, learned counsel for the petitioner would submit that the petitioner has been issued with a summary of the 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 second respondent, without giving any opportunity of personal hearing to the petitioner, confirmed the proposals contained in the show cause notice and passed the present impugned order; that even the said order was not served on the petitioner but was merely uploaded in the GST Portal.

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.G.Nanmaran, learned, Special Government Pleader (T) who takes notice for the respondents 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 respondent-Department has not taken any steps to serve the show cause notices or the summary of the order, impugned herein 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/orders. Thus, the petitioner was in the dark and had no knowledge of the issue of the Form GST DRC-01 Summary of the show cause notice and issue of GST DRC-07 Summary of the order until such time, the information was received from the respondent-Department

7. Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned orders and this is sufficient to hold that the impugned order is nothing but ex parte order, which is unsustainable in the eye of law and the notices/communications, which were merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, can no longer be deemed to be a sufficient service. 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 31.12.2023 is set aside and the matter is remanded back to the second respondent for fresh consideration.

ii) While remanding the matter, it is made clear that the impugned 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 second respondent is directed to provide personal opportunity of hearing by issuing a clear 14 days notice and after hearing the petitioner in full, shall decide the matter in accordance with law.

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

29.10.2024

sd
Index : yes/no
Neutral Citation : yes/no

To

1. The Assistant Commissioner (ST)
   Vellore (South) Assessment Circle,
   Vellore.

2. The Commercial Tax Officer,
   Vellore (South) Assessment Circle,
   Vellore.

Krishnan Ramasamy,J.,

sd

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