IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2024

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The Honourable Mr.Justice KRISHNAN RAMASAMY

W.P.No.31864 & 29662 of 2024
and W.M.P.Nos.34606 & 32312 of 2024

M/s.Adithyaa Enterprises,
Rep. by its Sole Proprietor,
Mr.S.Kishore,
306, Cheery Road, Salem
Tamil Nadu – 636 007.

...Petitioner in both W.Ps

Versus

1.Assistant Commissioner (ST)
Alagapuram Assessment Circle,
Commercial Taxes Office Buildings,
Pitchards Road, Hasthampatti,
Salem – 636 007.

...Respondent in W.P.No.31864 of 2024
& 1st Respondent in W.P.No.29662 of 2024

2.The Assistant Commissioner (GST & Central Excise)
Alagapuram, Salem I Division,
Salem Commissionerate,
Salem – 636 007.

...2nd Respondent in W.P.No.29662 of 2024

3.Axis Bank
Rep. by its Manager,
No.224/12,
Cuddalore Main Road,
Vazhapadi, Salem – 636 115.

...3rd Respondent in W.P.No.29662 of 2024

Prayer in W.P.No.31864 of 2024:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus praying to quash the impugned order dated 25.04.2024 bearing Reference No.ZD330424200661Y issued by the 1st respondent for FY 2018-19 for GSTIN: 33BSBPK6636E1ZZ and consequently, direct the respondent to provide an opportunity to the petitioner to put forth his case.

Prayer in W.P.No.29662 of 2024:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus praying to quash the impugned order dated 29.07.2024 for FY 2018-19 for GSTIN: 33BSBPK6636E1ZZ issued by the 1st respondent and consequently, direct the 1st respondent to drop the attachment proceedings.

For Petitioner in both W.Ps	:	Mr.M.Velmurugan
For Respondent in W.P.No.31864 of 2024 & Respondents 1 & 2 in W.P.No.29662 of 2024	:	Ms.Amirta Poonkodi Dinakaran, Government Advocate (Tax)

COMMON ORDER

Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (Tax) takes notice for the respondents 1 & 2.

2. With the consent of both sides, these writ petitions are taken up for final disposal at the admission stage itself.

3. The relief sought in W.P.No.31864 of 2024 is to quash the impugned order dated 25.04.2024 issued by the 1st respondent and consequently, direct the 1st respondent to provide an opportunity to the petitioner to put forth his case.

4. The relief sought in W.P.No.29662 of 2024 is to quash the impugned communication dated 29.07.2024 issued by the 1st respondent and consequently, direct the 1st respondent to drop the attachment proceedings.

4. The petitioner herein was running a business involved in distribution of Hindustan Lever Products. The petitioner was duly filing their returns and paying all the statutory taxes. However, the respondent had issued a Show Cause Notice dated 20.09.2019 to the petitioner, for not filing the returns for the past six months. The petitioner had closed their business in the year 2019 and then, intimated the respondent about ceasing

of their business and requested for cancellation of their GST number. Hence, the respondent vide order dated 28.11.2019, had cancelled the petitioner's registration. Subsequent to the cancellation of registration, the petitioner filed their Final Returns for the Financial Year 2018-19 on 04.08.2022 and the same was also accepted. However, the respondent issued a Show Cause Notice in Form GST DRC – 01 dated 28.12.2023, stating that the petitioner has not declared their correct tax liability while filing GSTR-3B. Finally, the respondent has passed the impugned order dated 25.04.2024, demanding the petitioner to pay a sum of Rs.94,22,565/-. Thereafter, the respondent sent a Letter dated 29.07.2024 to the 3rd respondent Bank seeking to recover the said demand of Rs.94,22,565/- from the petitioner's Bank Account, pursuant to which, the 3rd respondent Bank has transferred the sum of Rs.8,600/- available in petitioner's Account, to the 1st respondent/Assistant Commissioner (ST) and marked a negative lien on the petitioner's Account. Therefore, left with no other alternative, the petitioner has filed the present writ petitions before this Court.

5. The learned counsel for the petitioner submitted that the 1st respondent/Assistant Commissioner (ST) has issued the show cause notices

and impugned order only through online portals and e-mail. Since the petitioner had closed their business in the year 2019, they no longer following up the Government Portals. Hence, the petitioner was unaware of the proceedings. He also submitted that prior to the issuance of the impugned order, the respondent did not provide an opportunity of hearing to the petitioner to put forth their case. Further, the respondent had sent a letter to the 3rd respondent Bank seeking to recover a sum of Rs.94,22,565/- from the petitioner's Bank Account towards the demand.

5. On the other hand, the learned Government Advocate (Tax) appearing for the respondents 1 & 2 submitted that the matters may be remanded back to the 1st respondent /Assistant Commissioner (ST) 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 Government Advocate (Tax) appearing for the respondents 1 & 2 and perused the materials available on record.

7. As far as W.P.No.31864 of 2024 is concerned, without providing an opportunity of hearing to the petitioner, the 1st respondent/Assistant Commissioner (ST) has passed the impugned assessment order, which is in violation of the principles of natural justice. Therefore, this Court is of the opinion that the impugned assessment order is ought to be quashed and an opportunity of personal hearing has to be afforded to the petitioner to establish their case.

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 in W.P.No.31864 of 2024:

(i) The impugned order dated 25.04.2024 issued by the 1st respondent/Assistant Commissioner (ST) is quashed and the matter is remanded back to the 1st respondent/Assistant Commissioner (ST) 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 1st respondent/Assistant Commissioner (ST).

(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 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 1st respondent/Assistant Commissioner (ST) 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. So far as W.P.No.29662 of 2024 is concerned, the relief sought by the petitioner is to quash the communication dated 29.07.2024 sent by the 1st respondent/Assistant Commissioner (ST) to the 3rd respondent Bank and issue appropriate direction to the 1st respondent/Assistant Commissioner (ST) to drop the bank attachment proceedings. Since the impugned order in W.P.No.31864 of 2024 itself has been quashed, the attachment of the petitioner's Bank Account cannot survive any longer. Hence, the impugned communication dated 29.07.2024 sent by the 1st respondent/Assistant Commissioner (ST) to the 3rd respondent Bank, is quashed and the

attachment of petitioner's Bank Account is 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 3rd respondent Bank and on production of the same, the 3rd respondent Bank shall de-freeze the petitioner's Bank Account immediately.

10. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

24.10.2024

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.Assistant Commissioner (ST)
Alagapuram Assessment Circle,
Commercial Taxes Office Buildings,
Pitchards Road, Hasthampatti,
Salem – 636 007.

2.The Assistant Commissioner (GST & Central Excise)
Alagapuram, Salem I Division,
Salem Commissionerate,
Salem – 636 007.

KRISHNAN RAMASAMY, J.

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W.P.Nos.31864 & 29662 of 2024

24.10.2024