IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2024

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

W.P.No.31452 of 2023
and W.M.P.Nos.31068 & 31069 of 2023

M/s.Sri Geethapriya Silk rep. by
Its Proprietor Mrs.M.Geethapriya,
100/37, Rangadas Street,
Jari Kondalampatty,
Salem – 636 010. ...Petitioner

Versus

The State Tax Officer,
Kondalampatty Circle,
Salem. ...Respondent

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 respondent in GSTIN: 33BAZPG8584M1ZO/2017-18 and quash the proceeding dated 16.08.2023 passed therein.

For Petitioner : Mr.B.Raveendran
For Respondent : Mr.V.Prashanth Kiran,
Government Advocate (Tax)

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate (Tax) 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 by the petitioner challenging the order in GSTIN: 33BAZPG8584M1ZO/2017-18 dated 16.08.2023 issued 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, the respondent had issued the following notices:

(i) Notice in Form GST ASMT-10 dated 27.02.2023;

(ii) Notice in Form DRC-01A dated 15.05.2023;

(iii) Notice in Form DRC-01 dated 21.06.2023;

(iii) Personal Hearing Notice dated 28.06.2023; and

(iv) Reminder-1 dated 28.07.2023.

Out of the said notices, the Notice in Form DRC-01 dated 21.06.2023 sent through Registered Post was only delivered to the petitioner belatedly. After receiving the same, the petitioner's proprietor met the respondent, at that time, the respondent informed the petitioner's proprietor that a fresh notice will be sent to her. However, without issuing any fresh notice, the respondent had passed the impugned order dated 16.08.2023, stating that the petitioner utilized excess ITC for the Assessment Year 2017-18 and hence, there is a difference in GSTR-2A and GSTR-3B returns. The learned counsel also submitted that all the aforesaid notices and impugned order were uploaded in the online portal and the same were not served to the petitioner by any other mode. Hence, the petitioner was not aware of the proceedings and could not participate in the proceedings. Further, prior to the issuance of impugned order, the respondent did not even provide an opportunity of personal hearing to the petitioner to put forth their case. Therefore, the learned counsel prayed this Court to quash the impugned order.

5. On the other hand, the learned Government Advocate (Tax) 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

Government Advocate (Tax) appearing for the respondent and perused the materials available on record.

7. As far as this case is concerned, without providing an opportunity of hearing to the petitioner, the respondent has passed the impugned order, which is in violation of Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017. Therefore, this Court is of the opinion that the impugned 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 also, having regard to the submissions made by the learned counsel on either side, this Court issues the following directions:

(i) The impugned order in GSTIN: 33BAZPG8584M1ZO/2017-18 dated 16.08.2023 passed by the respondent is 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.

(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 three 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.

14.10.2024

mrr
Index: Yes/No
Neutral Citation: Yes/No
Speaking Order (or) Non-Speaking Order

To
The State Tax Officer,
Kondalampatty Circle,
Salem.

KRISHNAN RAMASAMY, J.

mrr

W.P.No.31452 of 2023

14.10.2024