IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.32237 of 2024
and
W.M.P.Nos.35017 & 35020 of 2024

Prakash Chetan Kumar ...Petitioner

Vs.

The Assistant Commissioner (ST)
The Commercial Tax Department,
Government of Tamil Nadu
Kothawalchavadi Assessment Circle,
Integrated Building for Commercial Taxes,
No.32, Elephant Gate Bridge Road,
(Off Wall Tax Road)
Vepery, Chennai – 600 003. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent pertaining to order in Ref No.ZD331223253931N dated 29.12.2023 and the consequential order in Ref No.GSTIN : 33AACPC4175G1Z6 dated 04.06.2024 and to to quash the same as arbitrary and to direct the respondent to refrain from taking any coercive action against the petitioner.

For Petitioner : Mr.Mayan H Jain

For Respondent : Ms.Amirta Poonkodi Dinakaran
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 order passed by the respondent dated 29.12.2023 and the consequential order dated 04.06.2024 and to quash the same and consequently, to direct the respondent to refrain the respondent from taking any coercive action against the petitioner.

3. Mr.Mayan H Jain, learned counsel for the petitioner would submit that the petitioner was not aware of the e-notice dated 27.07.2022 issued by the respondent-Department, alleging wrongful availment of ITC due to transactions with Balaji Sales Corporation, as the said notice was never served on the petitioner and therefore, the petitioner has no knowledge of its existence, it was only when the petitioner has visited the Office of the respondent-Department enquiring about the alleged notice dated 04.06.2024, the petitioner came to know of the impugned order dated 29.12.2023, as regards tax due, interest/penalty.

4. Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and are liable to be aside. However, the learned counsel would submit that in the event, this Court is inclined to set aside the impugned orders, the petitioner is agreable to pay 10% of the disputed tax amount and hence, prayed for appropriate orders.

5. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (T) who takes notice for the respondent 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.

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 was completely unaware of the e-notice dated 27.07.2022 and the impugned order dated

29.12.2023 issued by the respondent-Department, since, the said notice/order were not served physically, hence, the petitioner had no knowledge of those notice/orders and only when the petitioner has visited the Office of the respondent-Department enquiring about the alleged notice dated 04.06.2024, issued to him, the petitioner came to know of the impugned order dated 29.12.2023, as regards tax due, interest/penalty.. That apart, the petitioner's GST registration was cancelled on 03.03.2023, which is w.e.f. 30.11.2022, declaring no dues. Thus, the petitioner being granted closure of its GST registration vide the order dated 03.03.2023, certainly, the petitioner ought to have been granted an opportunity of hearing before passing the impugned orders. Therefore, it is clear that the impugned orders are nothing but an ex parte orders and suffer from violation of principles of natural justice, hence, this Court is inclined to set aside the same.

8. Accordingly, this Court passes the following orders:

i) The impugned order dated 29.12.2023 and the consequential order dated 04.06.2024 are set aside and matter is remanded back to the respondent for fresh consideration.

ii) While remanding the matter, it is made clear that the impugned orders are 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 certified copy of this order.

iii) Thereafter, the petitioner shall file a reply within three weeks and after the filing of reply, the respondent is directed to provide a personal opportunity of hearing by issuing a clear 14 days notice and after hearing the petitioner in full, shall pass necessary orders 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

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Index : yes/no
Neutral Citation : yes/no

To

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Vepery, Chennai – 600 003.

Krishnan Ramasamy,J.,

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