IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.32242 of 2024
and
W.M.P.No.35027 & 35028 of 2024

M/s. Ace Industrial Gases (P) Ltd.
Rep. by its Director,
Plot No.8, B-72,SIPCOT Industrial Complex,
Gummidipoondi – 601 201. ...Petitioner

Vs.

The Assistant Commissioner (ST)
Gummidipoondi Assessment Circle,
Survey No.1275/3 Integrated Commercial Taxes Building
Chennai (North) Division, Room No.112, 1st Floor,
Elephant Gate Bridge Road, Chennai – 600 003.

...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 of the respondent in his proceedings in GSTIN : 33AAACA6249G1ZY/2022-23, to quash the order dated 23.08.2023.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (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 23.08.2023 and to quash the same.

3. Mr.P.V.Sudakar, learned counsel for the petitioner would submit that show cause notice and other communications, which culminated in the impugned order were uploaded in the GST Portal, under the column " View Additional Notices and Orders" and the petitioner was not aware of the notices being uploaded in the GST Portal under the said column, as the petitioner used to verify their 'Dashboard' in the usual column, "View Notices and Orders', therefore, petitioner, who was unaware of those notices could file reply nor appear before the respondent on the date fixed for personal hearing and that the attitude of the petitioner in not filing reply or non-appearance before the respondent-Department is neither wilful nor wanton but only due to bona fide reasons, however, the respondent proceeded to confirm the proposals contained in the show cause notice and passed the impugned order.

4. Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and liable to be set aside, as the petitioner has not been afforded with an opportunity of personal hearing. 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.

5. Mr.C.Harsha Raj learned Additional Government Pleader (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 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 any notices/communications, which culminated in the impugned order directly through physical mode of service and made it available only in the GST Portal, that too, not in the usual column, which the petitioner used to verify , viz., under the tab "View Notices and Orders', but under the different column, "View of additional notices and orders', therefore, petitioner, who was not aware of those notices, could not file reply nor appear before the respondent on the date fixed for personal hearing, however, the respondent, without hearing the petitioner proceeded to confirm the proposals contained in show cause notice and passed the present impugned order.

8. Thus, it is clear that the respondent passed the impugned order without affording an opportunity of hearing to the petitioner, which is in total violation of principles of natural justice. Therefore, this Court is inclined to set aside the impugned order.

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

i) The impugned order dated 23.08.2024 is set aside and the matter is remanded back to the 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 respondent is directed to provide a 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.

10. 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

The Assistant Commissioner (ST)
Gummidipoondi Assessment Circle,
Survey No.1275/3 Integrated Commercial Taxes Building
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Krishnan Ramasamy,J.,

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