IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2024

Coram:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

W.P.No.31758 of 2024
and W.M.P.Nos.34508 & 34509 of 2024

Tvl.Krishna Electronics,
Represented by its proprietor R.Kavitha
46A, Vellaimottan Street,
Cuddalore – 607 004.
GSTIN: 33AXRPK4797J1ZP

...Petitioner

Versus

1.State Tax Officer (Intelligence)
Date Analytics Unit,
O/o.The Joint Commissioner (ST) Intelligence
Cuddalore Division,
No.1, Vallalar Nagar,
Cuddalore – 607 001.

2.The Commercial Tax Officer,
Cuddalore Division,
No.1, Vallalar Nagar,
Cuddalore – 607 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the 1st respondent in its impugned proceedings for the Assessment Year

2021-22 in GSTIN: 33AXRPK4797J1ZP/2021-2022 dated 15.07.2024 and the 2nd respondent consequential DRC-07 order bearing Ref.No.ZD3307241870684 dated 15.07.2024 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondents : Ms.Amirta Poonkodi Dinakaran,
Government Advocate (Tax)

ORDER

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

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 challenging the Assessment Order in GSTIN: 33AXRPK4797J1ZP/2021-2022 dated 15.07.2024 passed by the first respondent and consequential order bearing Ref.No.ZD3307241870684 dated 15.07.2024 passed by the second respondent.

4. The learned counsel for the petitioner submitted that as per the authorization issued by the Joint Commissioner (ST) (Intelligence), Vellore Division, Vellore, an inspection was conducted by the Cuddalore Intelligence Wing Officers in the petitioner's business place on 30.10.2023. On inspection, following defects were noticed by the Officials:

(i) Input Tax Credit Mismatch between GSTR-3B Vs GSTR-2A, for the Financial Year 2021-22

(ii) Non-payment of Tax in certain transactions.

In view of the said defects, the first respondent issued Notice in Form GST DRC-01A dated 16.11.2023 and the second respondent issued the Show Cause Notice in Form GST DRC-01 dated 15.02.2024, directing the petitioner to pay the tax demands or file objections, if any. Hence, the petitioner filed their reply dated 03.01.2024, clarifying the said discrepancies, however, even then, the respondents issued the reminders dated 04.03.2024 & 27.06.2024, directing the petitioner to pay the tax demands as proposed in the show cause notice. In response to the said reminders, the petitioner filed their reply, clarifying the discrepancies once again. After verifying the petitioner's reply, the first respondent has dropped the defect no.1, but, confirmed the defect no.2 and passed the Assessment Order dated 15.07.2024, raising a tax demand to the tune of Rs.4,10,332/- along with applicable interest and penalty for the Assessment Year 2021-22. The learned counsel further submitted that the petitioner has clearly stated in their reply that they are ready to provide all the supporting documents and information necessary to substantiate their claims before the Assessing Officer, but, prior to the passing of impugned orders, the respondents neither called for the records nor provided an opportunity of hearing to the petitioner to put forth their case. Therefore, the learned counsel prayed this Court to quash the impugned orders.

5. On the other hand, the learned Government Advocate (Tax) appearing for the respondents submitted that the matter may be remanded back to the first 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 respondents 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 respondents have passed the impugned orders, which is in violation of the principles of natural justice. Therefore, this Court is of the opinion that the impugned orders are 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:

(i) The impugned assessment order in GSTIN: 33AXRPK4797J1ZP/2021-2022 dated 15.07.2024 passed by the first respondent and consequential order bearing Ref.No.ZD3307241870684 dated 15.07.2024 passed by the second respondent are quashed and the matter is remanded back to the first 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. After making such payment, the petitioner shall produce the payment proof before the first respondent.

(ii) It is made clear that quashing of the impugned orders 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 first 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.

24.10.2024

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Index: Yes/No

Speaking Order (or) Non-Speaking Order

To

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KRISHNAN RAMASAMY, J.

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