IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.32054 of 2024
and
W.M.P.Nos.34793 and 34797 of 2024

Sri. V.M.Tyre Centre
Rep. by its Managing Partner
Sri.R.Manivannan,
No.426/4, Narsingapuram,
Attur Salem Main Road, Temple,
Pudhu Udaiyampatti,
Appamsamudram,
Salem- 636 108. ...Petitioner

Vs.

The State Tax Officer,
Attur (Town) Circle,
Salem. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the Respondent herein in GSTIN:33ABVFS0920M1ZS/2018-19 and quash the proceeding dated 26.04.2024.

For Petitioner : Mr.Raveendran B

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate (Taxes)

ORDER

This Writ Petition has been filed to challenging the order of the Respondent dated 26.04.2024 and to quash the same.

2. Ms.Amirtapoonkodi Dinakaran, learned Government Advocate (Taxes), takes notice on behalf of the Respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submits that show cause notice dated 21.09.2023 was issued to the Petitioner. Since, the same was uploaded in the "View additional Notices and Orders" tab of the GST portal, the Petitioner's consultant who was entrusted with GST filing works, had not noticed the said notice and therefore the Petitioner was not aware of the same and hence failed to file reply in time. Under such circumstances, impugned assessment order dated 26.04.2024 came to be passed demanding tax along with interest and penalty for the Assessment Year 2018-19 and the same was also uploaded in the GST portal. The Petitioner came to know of the said order belatedly, after getting call from the Respondent.

5. Further, she would submit that impugned assessment order came to be passed without affording an opportunity of hearing to the Petitioner and therefore the same is in violation of principles of natural justice and therefore prays to set aside the same.

6. The learned Government Advocate (Taxes) appearing for the Respondent submitted that though the Show Cause Notice followed by reminder notices were issued to the Petitioner, the Petitioner failed to submit its reply and therefore the Assessment Order came to be passed. He therefore prayed for appropriate orders.

7. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 10% of the disputed tax liability made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Government Advocate (Taxes) has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the Respondent and also perused the materials available on record.

9. In the present case, since the Show Cause Notice along with reminder notices were uploaded in the GST Portal, the Petitioner's consultant had not noticed the same and therefore the Petitioner was not aware of the said notices issued by the Respondent. The Petitioner came to know of the said notices after getting call from the Respondent-Department.

10. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

11. In the case on hand, the impugned order was passed without giving opportunity of personal hearing to the Petitioner. Hence, this Court is of the view that the impugned order passed in violation of principles of natural justice

and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned assessment order dated 26.04.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside and the matter is remanded to the Respondent for fresh consideration on condition that the Petitioner shall pay 10% of disputed tax to the Respondent within a period of ***four weeks*** from the date of receipt of a copy of this order and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The Petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

12. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

28.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
arr

To

The State Tax Officer,
Attur (Town) Circle,
Salem.

Krishnan Ramasamy,J.,

arr

W.P.No.32054 of 2024

28.10.2024