IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.31954 of 2024 &
W.M.P.Nos.34711 and 34712 of 2024

Tvl.Sri Kannan Engineering Works,
Rep. by its Proprietor,
Old No:248/New No.23,
Avarampalayam Road,
Coimbatore
Tamil Nadu:641 044. ... Petitioner

Vs.

The State Tax Officer,
P.N.Palayam Assessment Circle,
Coimbatore,
Tamil Nadu- 641 018. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the Impugned assessment order in Ref.No.ZD331223187292K dated 23.12.2023 passed under Section 73 of the CGST/TNGST Act, 2017, and uploaded along with summary of order in DRC-07, for the tax period 2017-18 passed by the respondent herein from the files of the respondent, herein, QUASH the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mr.G.Nanmaran (Taxes)
Special Government Pleader

***

ORDER

This writ petition has been filed by the petitioner challenging the impugned assessment order and the Summary order passed by the Respondent on 23.12.2023 for the period 2017-18 and to quash the same.

2. Mr.G.Nanmaran, learned Special Government Pleader takes notice on behalf of the Respondent.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner would submit that in the present case, the Respondent issued a show cause notice dated 29.09.2023 to the Petitioner. Since the same was uploaded in the "View Additional Notices and Orders" tab instead of "view notices and orders"

tab, the consultant of the Petitioner who used to access the GST Portal had not noticed the same. Therefore, the Petitioner was not aware of the Show Cause Notice and hence failed to file its reply. Under such circumstances, impugned assessment order along with summary order came to be passed by the Respondent on 23.12.2023 demanding tax along with interest and penalty for the Assessment Year 2017-2018 and the same were also uploaded in the "View Additional Notices and Orders" tab of the GST portal. The Petitioner came to know of the Show Cause Notice as well as Impugned order belatedly.

5.Further, he 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. On the other hand, the learned Special Government Pleader would submit that the Petitioner the Respondent uploaded show cause notice as well as personal hearing notice in the GST Portal, But, the

Petitioner failed to submit its reply and appear before the Authority concerned to substantiate its case and therefore the impugned assessment order along with summary order came to be passed.

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 Special Government Pleader has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the Respondent and also perused the materials available on record.

9. In the present case, since the Respondent uploaded the Show Cause Notice in the "View Additional Notices and Orders" tab of the GST portal instead of "view notices and orders" tab, the consultant of the

Petitioner who used to access the GST Portal had not noticed the same and therefore the same was not brought to the knowledge of the Petitioner and hence the Petitioner could not file its reply.

10. Further, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned orders. Hence, this Court is of the view that the impugned orders are 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 orders dated 23.12.2023 passed by the Respondent. Accordingly, this Court passes the following order:-

> (i) The impugned orders dated 23.12.2023 are 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.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

28.10.2024

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

To

The State Tax Officer,
P.N.Palayam Assessment Circle,
Coimbatore,
Tamil Nadu- 641 018.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.31954 of 2024

28.10.2024