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W.P.No.32061 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.32061 of 2024 &
W.M.P.Nos.34812 and 34814 of 2024

Tvl.Sky Moon Sea Foods,
Rep. by its Partner Mr.Satheesh Cherukattil
No.20/77, Venkatesan Street,
Chintadripet,
Chennai-600002.

...

Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Chintadripet Assessment Circle,
Integrated Commercial
Chennai-01.

...

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the impugned order of the Respondent in GSTIN:33ACRFS5596E1ZL/2017-18 dated 01.12.2023 and the consequential summary of Order in Reference No.ZD331223013346Y dated 02.12.2023 and quash the same and consequently direct the Respondent to entertain the records, documents and reply from the



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Petitioner and then pass order after affording a personal hearing to the Petitioner.

For Petitioner : Mr.M.Hariharan

For Respondent : Mr.V.Prashanth Kiran
Government Advocate (T)

ORDER

This writ petition has been filed by the Petitioner challenging the impugned order of the Respondent dated 01.12.2023 and the consequential summary of Order dated 02.12.2023 and quash the same and consequently direct the Respondent to entertain the records, documents and reply from the Petitioner and then pass order after affording a personal hearing to the Petitioner.

2. Mr.V.Prashanth Kiran, 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 admission stage itself.



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4. The learned counsel for the Petitioner would submit that in the present case, initially the Respondent has issued Show Cause Notice to the Petitioner on 20.09.2023, followed by two reminders and the same were uploaded in the GST portal. Since the accountant of the Petitioner Firm had left the job, the Petitioner was not aware of the same and hence they failed to file their reply. Under these circumstances, the impugned assessment order dated 01.12.2023 followed by summary order dated 02.12.2023 came to be passed by the Respondent demanding tax along with penalty and interest for the Assessment Year 2017-2018 and the same were also uploaded in the GST Portal. The Petitioner came to know of the aforesaid notices as well as impugned order only after the receipt of the recovery notice dated 09.10.2024 from the YES Bank, attaching the bank account of the Petitioner as per the communication of the Respondent dated 04.10.2024.

5. Further, he would submit that impugned order came to be passed without affording an opportunity of hearing to the Petitioner and



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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 Government Advocate (Taxes) would submit that the Respondents uploaded the show cause notice as well as the reminder notices in the GST Online Portal. But the Petitioner failed to submit reply 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 Government Advocate (Taxes) has no serious objection.

8. Heard the learned counsel for the Petitioner and the learned Government Advocate (Taxes) for the Respondents and also perused the



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materials available on record.

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9. In the present case, since the show cause notice as well as the reminder notices were uploaded in the GST Portal, the Petitioner was not aware of the same and therefore he is not in a position to file reply for the show cause notice.

10. Further, it appears that no opportunity of personal hearing was provided to the Petitioner prior to the passing of impugned order. 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 01.12.2023 and 02.12.2023 passed by the Respondent.

Accordingly, this Court passes the following order:-

(i) The orders impugned herein 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 Respondents 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.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment made on the bank account of the Petitioner cannot survive any longer and hence, it is lifted. As a sequel, the Respondent is directed instruct the concerned bank to release the attachment on the bank account of the petitioner, immediately upon the production of proof with regard to the payment of 10%



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of the disputed tax amount by the Petitioner as stated above.

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

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Note: Issue order copy on 30.10.2024.

To

The Assistant Commissioner (ST)(FAC),
Chintadripet Assessment Circle,
Integrated Commercial
Chennai-01.



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KRISHNAN RAMASAMY.J.,

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