IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.32256 of 2024
and
W.M.P.Nos. 35047 & 35048 of 2024

Tvl. M.R.Enterprises,
rep. by its Proprietor,
Mr.Srinivasan Shanmuganathan ...Petitioner

Vs.

The Deputy State Tax Officer – 2 (FAC)
Salem Town West Assessment Circle,
Salem, Tamil Nadu. ...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 on the files of the respondent herein in Form GST DRC-07 with Reference No.: ZD330524022239N dated 04.05.2024 along with detailed order in GSTIN : 33CVBPP0713K1ZS/2018-19 dated 30.04.2024 for the tax period Apr 2018-Mar 2019 and to quash the same as arbitrary.

For Petitioner : Mr.N.Chandirasekar
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 04.05.2024 along with detailed order dated 30.04.2024 for the tax period Apr 2018-Mar 2019 and to quash the same as arbitrary.

3. Mr.N.Chandirasekar, learned counsel for the petitioner would submit that the petitioner has been issued with a show cause notice and personal hearing notice, however, since the same were not served on the petitioner through physical mode but were only uploaded in the GST Portal under the column, "View additional notices and orders", the petitioner could not view the same and file reply/respond to those notices, however, since the petitioner failed to file any reply, the respondent proceeded to confirm the proposals contained in the show cause notice and passed the present impugned orders.

3.1 Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and is liable to be aside. 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.

4.. 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.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. On perusal of records, it is crystal clear that the impugned orders came to be passed against the petitioner, behind their back, as the respondent-Department has not taken any steps to serve the show cause notices/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal under the "View of additional notices and orders' column, hence, the petitioner was not aware of any such notices. Further, the Consultant engaged by the petitioner also failed to inform the petitioner about the notices.

6.1 Therefore, I find that, in the instant case, the petitioner has not been heard before passing the impugned orders and this is sufficient to hold that the impugned orders are nothing but ex parte orders, which are unsustainable in the eye of law and the notices/communications, which were merely uploaded to the GST Dashboard under "View Notice and Orders" and "View Additional Notices and Orders" tabs in the GST Portal, can no longer be deemed to be a sufficient service.

7. Accordingly, this Court passes the following orders/direction:-

i) The impugned order dated 04.05.2024 and the Detailed Order dated 30.04.2024 are 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 orders are 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 is directed to file reply along with supportive documents within a period of three weeks from the date of receipt of a certified copy of this order.

iv) Thereupon, the respondent is directed to consider the same and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner, and after hearing the petitioner in full, shall decide the matter in accordance with law.

9. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.10.2024

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Index : yes/no
Neutral Citation : yes/no

To
The Deputy State Tax Officer – 2 (FAC)
Salem Town West Assessment Circle,

Salem, Tamil Nadu.

Krishnan Ramasamy,J.,

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