IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.32216 of 2024
and
W.M.P.Nos.34992 & 34993 of 2024

M/s. L.P.Muthu Hardwares,
rep. by its Proprietor,
Mr.L.P.Muthu ...Petitioner

Vs.

The Deputy State Tax Officer,
Avadi Assessment Circle,
1275/3, Integrated Commercial
Taxes Building (North Division)
First Floor, Room No.122, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ...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 the impugned proceedings of the respondent in GSTIN /33AKMPMB8107E1Z9/2019-2020 dated 03.08.2024 and the connected order under Section 73 and the summary of order in FORM GST DRC 07 dated 03.08.2024 both issued in Reference No.ZD330824021917A and to quash the impugned proceedings as passed contrary to the provisions of the CGST/TNGST Act, 2017.

For Petitioner : Mr. P.Rajkumar

For Respondent : Mr.G.Nanmaran
Special 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 03.08.2024 and the connected order under Section 73 and the summary of order in FORM GST DRC 07 dated 03.08.2024 and to quash the same.

3. Mr. P.Rajkumar, learned counsel for the petitioner would submit that the petitioner has been issued with a show cause notice; that since the same was not served on the petitioner through physical mode but were only uploaded in the GST Portal, the petitioner did not notice their GST Portal in regular intervals, nor the Consultant engaged by the petitioner informed the petitioner about the same, hence, the petitioner could not respond to the notice; that since the petitioner failed to file reply to the show cause notice, the respondent without giving any opportunity of personal hearing to the petitioner, confirmed the proposals contained in the show cause notice and passed the present impugned order, which even the petitioner was not aware, and only when the petitioner's bank account came to be attached in pursuance of the assessment order, the petitioner came to know of the impugned order

3.1 Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and 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.G.Nanmaran, learned Special Government Pleader (T) 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, and only when the respondent-Department initiated recovery proceedings against the petitioner, the petitioner became aware of the impugned orders.

7. Thus, the respondent passed the impugned order without affording any opportunity of hearing to the petitioner, which is in total violation of principles of natural justice. Therefore, this Court is inclined to set aside the impugned orders.

8. Accordingly, this Court passes the following orders/directions:-

i) The impugned order dated 03.08.2024 and the connected order and summary of the order dated 03.08.2024 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 shall file a reply within three weeks and after the filing of reply, the respondent is directed to provide personal opportunity of hearing by issuing clear 14 days notice and after hearing the petitioner in full, shall decide the matter in accordance with law.

iv) The respondent-Department, upon production of proof with regard to payment of 10% of the disputed tax made by the petitioner, is directed to pass appropriate orders towards defreezure of the petitioner's bank account forthwith.

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,
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1275/3, Integrated Commercial
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First Floor, Room No.122, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

Krishnan Ramasamy,J.,

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