IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.33719 of 2024
and
W.M.P.Nos.36508, 36511 and 36512 of 2024

M/s.S.S.K.Transports Pvt. Ltd.,
(Represented by its Managing Director Mr.Sharminder Saravanan)
Gate No.2, No.57, Adam Nagar Main Road,
Nagalkeni, Chrompet,
Chennai, Tamil Nadu 600 044. ... Petitioner

Vs.

The Deputy State Tax Officer-2,
Pallavaram Assessment Circle,
Integrated Commercial Taxes Building,
III Floor, Room No.345,
Nandanam, Chennai 35. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in passing the impugned order Reference No.ZD330424160586D dated 22.04.2024 for the tax period 2018- 2019 and consequential recovery notice in Form GST-DRC-13 dated 09.09.2024 for the tax period 2018-2019 and quash the same as it has been issued without proper application of mind and contrary to the provisions of law.

For Petitioner : Ms.L.Sharanya Vijay for K.Vaitheeswaran

For Respondent : Mr.V.Prashanth Kiran Government Advocate

ORDER

The present writ petition is filed on the limited ground that the impugned order dated 22.04.2024 has been passed without affording the petitioners an opportunity of personal hearing.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a Goods Transport Agency registered under the GST Act. The petitioner has filed returns and paid appropriate taxes for the period 2018-19. On examination of information furnished in the return under various heads it was noticed that the value of outward supply reported in GSTR 1 is greater than the value of outward supply reported in GSTR 9. Similarly, the value of taxable supply disclosed in the E-way bill is greater than that in GSTR 1. It was also found that certain input tax credit which they are not entitled to and which would attract the restriction under 17(1) has been availed.

3. A notice in DRC01 dated 29.12.2023 was issued followed by reminders dated 08.02.2024, 15.02.2024, 22.02.2024. It is the case of the petitioner that no personal hearing was granted. The learned counsel for the petitioner would submit that in all the reminders though there is a column for date and time of personal hearing neither the date nor the time was specified therein. The extract of the Table in the reminder notices are relevant and thus extracted hereunder:

Reminder-1 dated 08.02.2024

You are also requested to bring documents mentioned in the attached annexure, if any, relating to case on the date of hearing and other information called therein.

Sr.No.	***Description***	***Particulars***
1.	*Date by which reply has to be submitted*	*15/02/2024*
2.	*Date of Personal Hearing*	*NA*
3.	*Time of Personal Hearing*	*NA*
4.	*Venue where Personal Hearing will be held*	*NA*

Reminder-2 dated 15.02.2024

You are also requested to bring documents mentioned in the attached annexure, if any, relating to case on the date of hearing and other information called therein.

Sr.No.	***Description***	***Particulars***
1.	*Date by which reply has to be submitted*	*21/02/2024*
2.	*Date of Personal Hearing*	*NA*
3.	*Time of Personal Hearing*	*NA*

Sr.No.	Description	Particulars
4.	*Venue where Personal Hearing will be held*	*NA*

Reminder-3 dated 22.02.2023

You are also requested to bring documents mentioned in the attached annexure, if any, relating to case on the date of hearing and other information called therein.

Sr.No.	Description	Particulars
1.	*Date by which reply has to be submitted*	*07/03/2024*
2.	*Date of Personal Hearing*	*NA*
3.	*Time of Personal Hearing*	*NA*
4.	*Venue where Personal Hearing will be held*	*NA*

It was thus submitted by the learned counsel for the petitioner that in the absence of personal hearing, the impugned order stands vitiated.

5. The learned counsel for the respondent would submit that this is an appealable order and therefore the writ petition ought not to be entertained.

6. This Court is conscious of the fact that writ petitions under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is availed. However, existence of alternate remedy is not an embargo or

an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

7. Considering the submissions made on both sides, this Court is of the view that failure to grant a personal hearing is contrary to the mandate contained under Section 75(4) of the GST Act and also gross violation of principles of natural justice. Thus the impugned order is set aside. It is open to the respondents to the respondents to issue a notice fixing the personal hearing and proceed with the assessment. If any such notice is issued the petitioner would appear for personal hearing on the date so fixed. In the event of failure to appear for personal hearing the assessment order shall stand restored.

8. Accordingly, the writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

12.11.2024

Speaking (or) Non Speaking Order

Index : Yes/ No
Neutral Citation: Yes/No
spp

To:

The Deputy State Tax Officer-2,
Pallavaram Assessment Circle,
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Nandanam, Chennai 35.