IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35231 of 2024
and
WMP Nos.38136, 38137 of 2024

Tvl.S S Enterprises Electricals
Rep by its proprietor Amutha Selvaraju : Petitioner

Versus

STATE TAX OFFICER 1
Office of Joint Commissioner (ST)
Chengalpattu Intelligence,
No 870/2A, 1st Floor, Kanchippuram High Road,
Thimmavaram Post,
Chengalpattu 603 101 : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records relating to the impugned Assessment Order dated 22.07.2024 bearing GSTIN. No.33AGRPA3240P1ZA/ 2018-2019 issued by the Respondent and quash the same as arbitrary.

For Petitioner : Mr.A.Abdul Rahman

For Respondent :Ms.Amrita Dinakaran,
Government Advocate

ORDER

The present writ petition is filed on the limited ground that the petitioner's request for personal hearing, vide its reply dated 03.05.2024, in response to show cause notice dated 16.02.2023 in DRC 01 was not considered by the authority concerned.

2. The petitioner is engaged in execution of works contract and deals in electrical transformers and static converters. The petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period, the petitioner filed its returns and paid the appropriate taxes. However, during the inspection of the petitioner's place of business in terms of Section 67 of the Act, the following discrepancies were noticed:

i) Supplies to SEZs without payment of tax reported in GSTR-9

ii) NIL rate supply reported in GSTR-9

iii) Un-reconciled payment of amount in GSTR-9C

iv) Mismatch between GSTR-2A and GSTR 3B

3. It is submitted by the learned counsel for the petitioner that an intimation in DRC-01A was issued on 14.09.2023, followed by a show cause notice in 16.02.2023. The petitioner had submitted its reply on 29.02.2024 and

03.05.2024. While filing its reply dated 03.05.2024, the petitioner sought for a personal hearing, which was not granted. It was thus submitted that failure to consider the request for a personal hearing while passing the impugned order of adjudication suffers from violation of principles of natural justice and it is also contrary to the provision contained in Section 75(4) of the GST Act. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

4. To the contrary, learned Government Advocate for the respondent would submit that this is an appealable order and adequate opportunities have been granted. As a matter of fact, the petitioner had also filed a reply, which was also considered and thus the writ petition ought not to be entertained.

5. Heard both sides and perused the material available on record.

6. This Court is conscious of the fact that normally jurisdiction under Article 226 would not be entertained when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction and has exceptions carved out to the above rule, one such exception is where the order is

without jurisdiction.

7. This Court is of the view that once a request for personal hearing is made, duty is cast on the assessing authority to consider the same. Section 75(4) of the GST Act, appears to cast a mandate on the assessing authority to grant a personal hearing, if a request is made. In view thereof, the failure to consider the request to grant personal hearing vitiates the impugned order.

8. In view of the above, the impugned order dated 22.07.2024 is set aside. It is open to the respondent to fix a date of personal hearing and proceed in accordance with law and complete the adjudication.

9. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mrn

To

STATE TAX OFFICER 1
Office of Joint Commissioner (ST)
Chengalpattu Intelligence,
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MOHAMMED SHAFFIQ, J.

mrn

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