IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.36360 of 2024
and W.M.P.Nos.39235 & 39236 of 2024

Tvl.Tamilnadu Police Canteen Salem City,
Rep by the Vice President/ Deputy
Commissioner of Police, Salem City,
Ms.B.Geetha,
No.3, Armed Reserve Jim Building,
Sankari Main Road, Line Medu,
Annathanapatty, Salem 636006. ... Petitioner

Vs.

The Superintendent of Central Tax,
Office of the Superintended of GST & Central Excise,
Salem II Range,
No.106, 3rd Floor, Varalakshmi Orchid,
Ramakrishna Road, Salem 636007 ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the impugned order-in-original with OIO Sl.No.08/2023-GST-SUPDT under Section 73 of the TNGST Act 2017/CGST Act, 2017 dated 09.10.2023 having DIN-20231059XP000000DC86 passed by the respondent and Form GST DRC-07 dated 25.01.2024 having reference No.ZD330124118879A for the Financial Year 2018-19 issued by the respondent and quash the same as it was passed in violation of principles of natural justice.

For Petitioner : Mr.S.Anandh

For Respondents : Mr.Rajendran Raghavan, SC

ORDER

Mr.Rajendran Raghavan, learned Standing Counsel (Tax) takes notice on behalf of the respondent. With the consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The present writ petition is filed challenging the impugned order in OIO Sl.No.08/2023-GST-SUPDT dated 09.10.2023, passed by the respondent and Form GST DRC-07 dated 25.01.2024 having reference No.ZD330124118879A for the Financial Year 2018-19 issued by the respondent.

3. It is submitted by the learned counsel for the petitioner that the petitioner is running a police canteen and had taken GST registration for the said operations. The registration under the Tamilnadu Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017 was cancelled on 30.11.2022. Thereafter, a show cause notice dated 26.05.2023 was issued

alleging that there is a shortfall of output tax liability declared between GSTR-3B and GSTR-1 for the financial year 2018-19. He further submitted that due to communication misunderstanding, the reply to the show cause notice did not reach the respondent's office.

4. It is submitted by the learned counsel for the petitioner that an intimation in Form GST DRC-07 dated 25.01.2024 followed by a notice dated 26.05.2023. Further, personal hearing was offered on 14.09.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded under the field "Additional Notices and Orders" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. 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.

5. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024,*** to submit that this Court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

6. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Standing Counsel appearing for the respondent does not have any serious objection.

7. In view thereof, the impugned order and consequential notice passed by the respondent dated 09.10.2023 and 25.01.2024 respectively are hereby set aside and this Court is inclined to pass the following orders:

a) The petitioner shall deposit 25% of the disputed tax within a period of two weeks from the date of receipt of a copy of this order.

b) On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four weeks from the date of receipt of a copy of this order along with supporting documents/material.

c) If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner.

d) If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

Accordingly, the **Writ Petition stands disposed of with the above observations and directions**. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.12.2024

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Index : Yes / No
Speaking order / Non-speaking order

J.SATHYA NARAYANA PRASAD. J,

vkr

To

The Superintendent of Central Tax,
Office of the Superintended of GST & Central Excise,
Salem II Range,
No.106, 3rd Floor, Varalakshmi Orchid,
Ramakrishna Road, Salem 636007.

W.P.No.36360 of 2024

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