IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **10.12.2024**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.37072 of 2024
and W.M.P.Nos.40053 & 40054 of 2024

Tvl.Geetha General Stores,
No.63 A, Gandhi Road,
Sriperumbudur, Kanchipuram – 602 105.
Rep. by its Proprietrix
Mrs.Vasudevan Geetha ... Petitioner

Vs.

1.The Deputy Commissioner (ST),
Kanchipuram Zone, 1st Floor,
Commercial Taxes Building,
Collectorate Campus, Kanchipuram – 631 501.

2.The State Tax Officer (ST),
Sriperumbudur Assessment Circle,
4/109, Chennai Bangalore Road,
Varadharajapuram, Chennai – 600 123. … Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent's order dated 09.11.2023 in Reference No: ZD331123059470T and quash the same and direct the first respondent to de-freeze the petitioner's bank account (Account No: 32650100001111, Bank of Baroda, Sriperumbudur Branch).

For Petitioner : Mr.Theertha Narayanan.G

For Respondents : Mr.Harsha Raj,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order passed by the respondent dated 09.11.2023 for the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is doing retail business of selling FMCG, which is registered under the Goods and Services Tax Act, 2017. During the relevant period 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was found that there are certain discrepancies.

3. It is submitted by the learned counsel for the petitioner that notice in Form GST DRC-01 dated 24.06.2023 followed by show cause notice in Form DRC-01 dated 12.09.2023 was issued by the respondent. However, the petitioner had neither filed its reply nor availed the opportunity of personal hearing. Hence, the impugned order dated 09.11.2023 came to be passed.

4. It is submitted by the learned counsel for the petitioner that neither the show cause notice 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 “View Notice and Orders” and “View Additional Notices and Orders” tabs 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 further 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. Learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.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 by the learned counsel for the petitioner that

they have already remitted pre-deposit of 10% of the disputed tax and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

7. Taking into account the peculiar facts of the case, wherein the petitioner has already remitted 10% of the disputed tax amount, this Court is of the considered view that the petitioner may be granted one final opportunity to put for their objections, which was not objected to by the learned Additional Government Pleader appearing for the respondents.

8. In view thereof, the impugned order dated 09.11.2023 is set aside and this Court is inclined to pass the following orders:

(a) It is open to the respondents to verify the above statement made by the learned counsel for the petitioner that 10% of the disputed tax amount has been remitted already.

(b) If the statement made by the learned counsel for the petitioner regarding the payment of aforesaid 10% of the disputed tax amount is incorrect, the respondent authority shall intimate the same to the petitioner, who shall deposit 25% of disputed tax within a period of two weeks from the date of such intimation.

(c) On complying with the above conditions, 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.

(d) If any such objections are filed within the stipulated period, the respondents shall consider the same and pass appropriate orders in accordance with law after affording the petitioner a reasonable opportunity of hearing.

(e) If the objections are not filed within the stipulated period i.e., four weeks from the date of receipt of a copy of this order or if deposit of 25% is not made within the stipulated period, if not already paid, the impugned order of assessment shall stand revived.

9. 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.

10.12.2024 (vm)

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

To:

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