BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.4287 of 2024 and
WMP(MD) Nos.4122 & 4123 of 2024

M.Ramakrishnan ... Petitioner

Vs

The Deputy State Tax Officer-2,
Rajapalayam-1 Assessment Circle,
Rajapalayam,
Virudhunagar District. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent vide his order in GSTIN: 33ACQPR885E1Z0/2022-2023, dated 27.07.2023 and quash the same as it is illegal and in gross violation of principles of natural justice and further direct the respondent to re-do the assessment afresh after providing an opportunity to personal hearing as per the provisions of the GST Act.

For Petitioner : Mr.A.Satheesh Murugan
For Respondent : Mr.A.Baskaran
Additional Government Pleader

O R D E R

The petitioner is a works contractor registered with the GST Act, 2017. The respondent has found certain discrepancies on the returns filed by the petitioner for the assessment year 2022-2023. Therefore, a notice was issued by the respondent in DRC 01, dated 30.05.2023. The petitioner has not replied for the same along with the necessary documents. Therefore, the final order has been passed by the respondent under Section 73 of TNGST Act, 2017 imposing penalty on the petitioner that this petitioner/tax payer has made non-willful mistatement. As against this order, dated 27.07.2023, the petitioner has filed this writ petition.

2.The learned counsel for the petitioner submits that the petitioner is having the required documents to substantiate his claim that there is no mis-statement and discrepancy and the documents are also available in the common portal. However, the respondent without providing sufficient opportunity to the petitioner has passed the impugned order. According to the learned counsel for the petitioner, notice in DRC 01 and the impugned order, dated 27.07.2023 have been issued through portal and it was not communicated to the petitioner physically. Therefore, the petitioner is not aware of the same. Only in the month of February 2024 only, the petitioner came to know about the impugned order. Thereafter, he immediately approached this Court challenging the impugned order.

3.The learned counsel has relied on the typed set of papers enclosed along with the affidavit filed in support of this writ petition and submits that the required documents are available in the common portal and the petitioner is ready to produce the same before the respondent. The learned counsel also relied on the judgment of the Honourable Division Bench of Gujarat High Court in ***Aggrawal Dyeing and Printing Works Vs. State of Gujarat and***

others, reported in ***2022 107 GSTR 406 (Guj)*** and submits that in the said order, the Division Bench has held that till the technical glitches are cured, the Department shall issue the show cause notice and the subsequent orders in physical form, containing all the material particulars and informations therein to enable the dealers to respond effectively. The learned counsel has also relied on the orders passed by this Court in W.P.Nos.27651, 27654 and & 27657 of 2021, dated 04.02.2022.

4.Mr.A.Baskaran, learned Additional Government Pleader who takes notice for the respondents submits that if the petitioner is prepared to submit the required documents, they are inclined to provide one more opportunity to the petitioner.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The petitioner is a works contractor registered with the GST Act, 2017. According to the petitioner, the respondent has imposed penalty on the petitioner for non-willful misstatement and the same was uploaded in the common portal and not communicated to the petitioner physically. The petitioner's contention is that he is having all the required documents to substantiate that there is no discrepancy and he is ready to submit the same. The learned counsel has relied on the order of the Division Bench of the Gujrat High Court, wherein, it was held that show-case notice and other related orders in physical form shall be dispatched to the dealers by RPAD, till the technical glitches are cured. Since the petitioner is ready to produce all the necessary documents, the respondent is also inclined to provide one more opportunity to the petitioner.

7.In view of the above, this writ petition is allowed. The order impugned in this writ petition is set aside and the issue is remanded back to the respondent for fresh consideration. The petitioner shall appear before the respondent on 05.03.2024 along with the required documents without expecting any separate notice from the Department. The respondent shall consider the documents of the petitioner and pass orders afresh as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes
vrn

To

The Deputy State Tax Officer-2,
Rajapalayam-1 Assessment Circle,
Rajapalayam,
Virudhunagar District.

B.PUGALENDHI, J.

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Order made in
W.P(MD)No.4287 of 2024 and
WMP(MD) Nos.4122 & 4123 of 2024

26.02.2024