BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.8604 of 2024
and
W.M.P.(MD).No.7885 of 2024

Welcome Traders,
Represented by its
Partner C.Kamalesh ... Petitioner

Vs

1.The Commissioner of Commercial Taxes (ST),
Chepauk, Chennai-600 005.

2.The State Tax Officer (ST),
O/o. The State Tax Office (ST),
Sattur-I,
Assessment Circle,
Virudhunagar District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in GSTIN/ID:33AABFW4008P1Z1, for the assessment year 2017-2018 dated 24.12.2023 in (Ref.No.ZD3312231909781) and quash the same as illegal and consequently directing the second respondent to pass order after issuing notice to the petitioner and erstwhile partner and to afford the opportunity the personal hearing.

For Petitioner : Mr.K.Vadivelu

For Respondents : Mr.J.K.Jeyaseelan,
Government Advocate

O R D E R

Heard both sides.

2. The petitioner, who is a partner of the firm, *viz.,* Welcome Traders, claims that the partnership was dissolved and that the registration obtained by the partnership firm was also cancelled on 19.07.2023 and that the petitioner is now continuing the same business with the separate TIN as a proprietor. It is submitted that despite cancellation of the registration, the impugned order has been passed against the partnership firm without notice to the other partners, who exited from the partnership firm, viz., Mr.Chellkumar. It is submitted that the impugned order has been passed in violation of principles of natural justice as the petitioner was also not heard and the order was uploaded in the web portal long after the partnership firm ceased to exist to carry on the business and had surrendered the registration on 19.07.2023 which was also cancelled in response to application for surrender of registration on 17.07.2023. It is submitted that

in any event the impugned order has been passed in gross violation of principles of natural justice, it is liable to be set aside.

3. The learned Government Advocate appearing for the respondents on the other hand would refer paragraph No.5 of the order dated 19.07.2023 bearing Reference Number : ZA330723088829Y for cancellation of registration which read as follows:

> *"5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the Rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation."*

4. It is therefore submitted that the *interse* dispute between the petitioner with Mr.Chellkumar, his erstwhile partner is to be decided independently in a Civil Court. Both the petitioner and Mr.Chellkumar are jointly and severally liable and that the demand has to be recovered from the partnership firm both from the petitioner and the other parties. It is submitted that there is no merit in challenge to the impugned order as the

impugned order proceeded a proper notice which was sent in the web portal.

5. Clause 5 of the cancellation order makes it clear that the partnership firm has surrendered the registration on 19.07.2023 was still bound to tax liability for the past period. Therefore, it is not open for the petitioner to question the impugned order. Therefore, it is cannot be set aside on this ground.

6. At the same time, the facts remains that the petitioner was unable to participate in the proceedings which is culminated in the impugned order. As there is a violation of principles of natural justice, on this limited ground alone, the impugned order is set aside and the case is remanded back to the respondents to pass a fresh order on merits.

7. The impugned order shall be treated as a corrigendum to the show cause notice in the name of the said partnership firm bearing Registration No. TIN No.GSTIN33AABFW4008P1Z1. It is expected that the respondents will issue notice to the erstwhile partner, viz.,

P.Chellkumar as well. It is expected that the petitioner and Mr.Chellkumar will file a reply to the proceedings within a period of sixty days from the date of receipt of a copy of this order. Thereafter, order shall be passed within a period of sixty days thereafter. Needless to state that both the petitioner and the erstwhile partner, P.Chellkumar shall be given adequate opportunity to make their submission. The petitioner shall however deposit 10% disputed tax as a condition for participating in the proceedings. Incase, if the petitioner fails to pay the amount as stipulated above, it will be deemed that this writ petition was dismissed.

8. This Writ Petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

04.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG

To
1.The Commissioner of Commercial Taxes (ST),
Chepauk, Chennai-600 005.
2.The State Tax Officer (ST),
O/o. The State Tax Office (ST),
Sattur-I, Assessment Circle, Virudhunagar District.

C.SARAVANAN, J.

TSG

W.P.(MD)No.8604 of 2024

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