BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.8390 of 2023
and
W.M.P(MD)No.7715 of 2023

S.Sivakumar ... Petitioner

Vs.

The Additional Commissioner of GST & Central Excise,
Central Revenue Building,
4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records connected with Order-in-Original No.MDU-GST-ADC-17-2022, dated 30.12.2022 passed by the respondent herein and to quash the same for having been passed in gross violation of principles of natural justice.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned proceedings, dated 30.12.2022 on the premise that it is made in gross violation of principles of natural justice.

2. The petitioner is engaged in the business of trading in Iron and Steel products. The petitioner is a proprietory concern. The petitioner was registered under the Tamil Nadu Goods and Service Tax Act, 2017. It is submitted by the learned Counsel for the petitioner that the petitioner had filed the returns under the GST Act by paying appropriate taxes. It is submitted by the learned Counsel for the petitioner that on the basis of alleged inputs received from the Commissionerate of CGST and Central Excise, Coimbatore that the petitioner had issued invoices to M/s.Aaliya Enterprises, M/s.Vinayak Trading and M/s.Star International without actual supply of goods, investigation against the petitioner was stated to have been initiated by the officers of the Head Quarters, Preventive Unit, Commissionerate of CGST and Central Excise, Madurai. Upon verification, it was found that there was no premises bearing Door No. 1/90-M instead only Door No.1/90 existing, which was the resident place of one Rajasekar. The additional place of business at 2/41A South Street, M.Alagapuri, Virudhunagar was also verified and documents pertaining to the alleged supplies made by the petitioner to the above three traders were retrieved.

3. It was further submitted by the learned Counsel for the petitioner that during the course of the investigation, there were number of defects stated to have been noticed *inter alia* including availment of Input Tax Credit by the petitioner on the basis of invoices without acutal receipt of the goods and also claim of supplies being made without involvement of goods.

4. This Court does not propose to examine the merits of the case inasmuch as and I intend to confine myself to examine whether the impugned order has been made after affording the petitioner a reasonable opportunity of hearing as contemplated under Section 73 / 74 of the CGST Act, 2017.

5. It is submitted by the learned Counsel for the petitioner that he had received an intimation on 25.08.2022 informing him that he may appear for a personal hearing on 02.09.2022. The above intimation was received on

29.08.2022. The petitioner forwarded the said personal hearing intimation to his Counsel, who was not endorsed and to whom the copy of the personal hearing was not endorsed, despite the fact that the learned Counsel had filed a vakalath on behalf of the petitioner. On the basis of the request made vide e-mail by the consultant on behalf of the petitioner, the matter stood adjourned to 02.09.2022. On 16.09.2022, another intimation was given fixing the personal hearing on 20.09.2022. In response to which, the learned Counsel for the petitioner vide e-mail, dated 19.09.2022 submitted that he had been tested covid postive and is in isolation and under the medication. Thus he sought for a time. In response to the above request, a notice for personal hearing was again issued on 21.09.2022 fixing the personal hearing on 22.09.2022 and 23.09.2022 respectively. The petitioner's Counsel vide his e-mail, dated 21.09.2022 stated that he is in quarantine having tested positive, thus, unable to attend official work and thus, he request for time. The petitioner intimated his inability to avail the opportunity and to also furnish him advance notice of hearing, so that he is in a position to travel and appear.

6. While the petitioner and his learned Counsel was expecting intimation of the personal hearing, the petitioner received a registered personal cover on

15.02.2023 containing the impugned order-in-original, dated 30.12.2022. It is submitted that the petitioner in fact submitted a reply, dated 25.05.2022, the impugned order does not even contain a reference to the said reply, clearly showing non-application of mind to the material on record. It was also submitted by the learned Counsel for the petitioner that the denial of opportunity of personal hearing when the petitioner had brought to the notice of the Adjudicating Authority, the fact of the petitioner having been affected with covid and quarantined is clearly arbitrary and in violation of principles of natural justice.

7. The learned Senior Standing Counsel for the respondent on the other hand would submit that these orders are appealable and therefore, the writ petition ought not to be entertained and would reiterate that the petitioner was engaged in bill trading. Thus the writ petition ought not to be entertained and that there is no evidence to indicate that the reply, dated 25.05.2022. In fact there is no proof of having furnished the reply, dated 25.05.2022. As a matter of fact, the counter expressly denies the receipt of objection, dated 25.05.2022.

8. Having considered the submissions made on either side, this Court finds that there is merit in the submission of the learned Counsel for the petitioner that the impugned order has been passed in great haste without taking into account the request for petitioner's Counsel for adjournment. More so, when the request for adjournment was made on the premise that he had been affected with covid and was under quarantine and medication. In such circumstances, it is only necessary that the Adjudicating Authority ought to have granted another opportunity to enable the petitioner to participate effectively. Having failed, this Court is of the view that the opportunity, if any, that was granted was not real but illusory. Therefore, the impugned order is liable to be set aside and accordingly, set aside. It is open to the petitioner to treat the impugned order as show cause notice and submit his objection, within a period of two weeks from the date of receipt of a copy of this order and also request for a personal hearing. If such reply is filed and a request for personal hearing made, the same would be considered and orders shall be passed after affording the petitioner a reasonable opportunity of hearing.

9. It is submitted by the learned Senior Standing Counsel for the respondent that the petitioner should co-operate and esnure that no unnecessary request for adjournment is made, to which the learned Counsel for the petitioner would readily agree.

10. The writ petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

17.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Additional Commissioner of GST & Central Excise,
Central Revenue Building,
4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002.

MOHAMMED SHAFFIQ, J.

BTR

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