BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.17843 of 2024
and
W.M.P.(MD) Nos.15301 and 15302 of 2024

M/S.Sri Balaji Marketing,
rep. by its Proprietor,
Murugesan Gopi Krishnan ... Petitioner

/vs./

1.The Deputy Commissioner (State Tax),
GST Appeal – Madurai & Tirunelveli,
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai 625 020.

2.The State Tax Officer,
Nilakottai Assessment Circle,
Commercial Taxes Buildings,
Nilakottai,
Dindigul District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the 2nd respondent vide his proceedings in Reference

No.33AKGPG0781N1Z2/21-22, Dated 07.03.2024 and quash the same as it is illegal and passed in gross violation of Principles of Natural Justice and further direct the Respondent to re-do the assessment afresh after providing the petitioner an opportunity of Personal Hearing as per the provisions of the GST Act, 2017.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner is before this Court against the impugned order dated 07.03.2024 passed by the second respondent for the assessment year 2021-22.

2.By the impugned order, the proposal in notice in DRC 01 dated 19.10.2023 has been confirmed. The case of the petitioner is that the impugned order records that the petitioner has not replied to the aforesaid notice. In this connection, the learned counsel for the petitioner has drawn attention to the reply dated 25.03.2023, which is a reply to the show cause notice in DRC 01 dated 10.02.2023.

3.It appears that a personal hearing was also held earlier on 14.03.2023 and thereafter, the petitioner had filed a reply on 25.03.2023 followed by another notice in GST DRC 01 dated 19.10.2023 under Section 74(1) of the GST Act, 2017, to which the petitioner has not replied.

4.Therefore, it cannot be said that the impugned order has been passed without considering the reply of the petitioner. The petitioner had not replied to the show cause notice dated 19.10.2023 issued under Section 74(1) of the GST Act, 2017.

5.Be that as it may, the petitioner deserves a fresh opportunity to explain the case, as the petitioner had assumed that the reply filed earlier on 25.03.2023 was sufficient.

6.To balance the interest of the parties, this Court is inclined to set aside the impugned order and remit the case back to the second respondent to pass a fresh order on merits and in accordance with law subject to the petitioner depositing

10% of the disputed tax from its Electronic Cash Register to the credit of the Government.

7.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice issued to the petitioner. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The second respondent shall thereafter pass a fresh order on merits and in accordance with law within a period of two months. Needless to state that the petitioner shall be heard, before fresh order is passed.

8.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No **31.07.2024**
Internet : Yes / No
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C.SARAVANAN, J.

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