BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.28324 of 2024
and
W.M.P.(MD)No.24005 of 2024

M/s.Arun Prabhu & Co.,
Represented by its Partner,
B.Paulson Prabhu ...Petitioner

Vs

The Assistant Commissioner (ST),
Sivakasi III Assessment Circle,
Commercial Tax Buildings,
NGO Colony, Satchiapuram,
Sivakasi – 626 123. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in GSTIN 33ABHFA9548H1Z9 / 2019-2020 dated 10.08.2024 and to quash the same as cryptic, non-speaking, illegal, arbitrary, wholly without jurisdiction and direct the respondent to pass order afresh by considering the objections and records filed by the petitioner on 26.06.2024 after affording opportunity of personal hearing as contemplated under Section 75(4) of the TNGST Act, 2017 and as per the guidelines issued by the Commissioner of State Tax, Chennai in Circular No.8/2024 dated 29.08.2024.

For Petitioner : Mr.N.Sudalai Muthu

For Respondent : Mr.J.K.Jayaselan
Government Advocate

O R D E R

Heard Mr.N.Sudalai Muthu, learned counsel for the petitioner and Mr.J.K.Jayaselan, learned Government Advocate for the respondent.

2. This Writ Petition has been filed challenging the order of the assessment order of the respondent on the sole ground that the same is not in conformity with the provisions of the TNGST Act.

3. The learned counsel for the petitioner would submit that even though the petitioner was issued with a notice on 29.05.2024 for which a detailed reply had been filed by the petitioner, the petitioner was not aware of the hearing notices issued by the respondent. The respondent had passed an order on 10.08.2024, but failed to determine the tax payable by the petitioner. Instead, it merely stated that the reply was not in order and upheld the show cause notice. He would submit that the impugned order was passed merely by extracting the show cause notice

issued to the petitioner on 29.09.2024 and the petitioner's reply dated 26.06.2024, without any further consideration. He would further submit that the impugned order lacks any discussion on why the petitioner's reply was deemed unacceptable, nor does it make any determination as required under the Act. Therefore, he requests this Court to set aside the impugned order and remit the matter back to the authority, for passing a fresh order on merits and in accordance with the law.

4. The learned Government Advocate appearing for the respondent would submit that the show cause notice itself explicitly stated the reasons for its issuance, which should be considered as the respondent's determination. He would further submit that the petitioner had approached this Court without exhausting the available alternative remedy.

5. I have considered the submissions made on either side and perused the materials available on record.

6. A perusal of the impugned order reveals that the respondent failed to apply his mind to the petitioner's reply. The respondent merely

re-produced the show cause notice and the reply, and in a single, cryptic line, concluded that the reply was "not found in order" without providing any reasons. As rightly pointed out by the learned counsel for the petitioner that the impugned order lacks any determination on why the show cause notice should be sustained. For the aforementioned reasons, the impugned order appears to have violated Section 73 of the GST Act, and it is liable to be set aside.

7. In view of the above, the Writ Petition is allowed and the impugned order dated 10.08.2024 is set aside. The matter is remitted back to the respondent to consider the reply of the petitioner and give him one final opportunity of personal hearing and thereafter pass orders on merits and in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.12.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

The Assistant Commissioner (ST),
Sivakasi III Assessment Circle,
Commercial Tax Buildings,
NGO Colony, Satchiapuram,
Sivakasi – 626 123.

K.KUMARESH BABU, J.

Nsr

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