IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.3588 of 2025
and
W.M.P.No.3970 & 3971 of 2025

Tvl.Sri Vinayaga Tiles & Granites
(rep. by its Proprietor,
Mr.Shanmugam Murugeshan.

...Petitioner

Vs.

The Deputy State Tax Officer (ST)
Avinashi Assessment Circle,
Avinashi. ...Respondent

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the files of the respondent herein in Form GST DRC-07 with Ref.No.ZD331223254731Q dated 29.12.2023 along with detailed order in GSTIN : 33AYAPM9399N1ZM/2017-18 dated 29.12.2023 for the assessment period 2017-18 and to quash the same.

For Petitioner : Mr.N.Chandrasekar
For Respondent : Mrs.K.Vasanthamala
Government Advocate (T)

Order

Heard Mr.N.Chandrasekar, learned counsel appearing for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate (T), who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the respondent in Form GST DRC-07 dated 29.12.2023 along with a detailed order in GSTIN : 33AYAPM9399N1ZM/2017-18 dated 29.12.2023 and to quash the same.

3. The learned counsel for the petitioner would submit that the respondent, without issuing any intimation in Form GST ASMT -10, directly issued Notice in Form GST DRC-01A dated 26.09.2023, thereafter, Form GST DRC-01 dated 29.09.2023 and the remainder dated 19.02.2024, since all such notices were merely uploaded in the GST Portal, under the "Additional Notices" column, the petitioner has no occasion to view the portal, and the petitioner had no knowledge about the impugned proceedings, until, the petitioner's Accountant has brought to the notice about the impugned proceedings in the 2nd Week November, 2024.

3.1 Further, it is contended that though the impugned order proceeds to state as if, opportunity of personal hearing was granted to the petitioner on 01.12.2023 but the petitioner has not appeared, the question of appearing before the respondent would arise only when the reply filed by the petitioner was taken note of by the respondent and the petitioner was called upon to submit their explanation/objections along with supportive documents to substantiate their claim in person, however, in the present case, the petitioner was called upon to appear for the personal hearing, even before the filing of reply by the petitioner. Therefore, the learned counsel would submit that the impugned order passed by the respondent is arbitrary, illegal and suffers from violation of principles of natural justice, as the petitioner has not been heard before passing the impugned order, hence, he prays for setting aside the impugned order.

4. The learned Government Advocate (T) for the respondent would submit that though notice in Form DRC-01A dated 26.09.2023, followed by Notice in GST DRC-01 dated 29.09.2023 and reminder dated 26.11.2023 were sent, the petitioner has not responded to any such notices, and not even appeared during the personal hearing fixed on 01.12.2023, therefore, the impugned order came to be passed, and hence, it is not open to the petitioner to contend that no personal hearing opportunity was provided to the petitioner.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. In the present case, the respondent issued a Notice in Form DRC-01A dated 26.09.2023, followed by Notice in FORM GST DRC-01 dated 29.09.2023, and reminder dated 27.12.2023. However, since all such such notices were merely uploaded in the GST Portal, under the tab "Additional Notices', the same were unnoticed by the petitioner. In fact, the impugned order dated 29.12.2023 was even unknown to the petitioner, and only when the petitioner's Accountant has brought to the notice of the petitioner about the impugned proceedings, the petitioner became aware of the impugned proceedings, i.e. in the 2nd Week of November, 2024, thereafter, the petitioner filed reply on 27.12.2023, however, the respondent without hearing the petitioner passed the impugned order on 29.12.2023, stating as if, the petitioner has failed to appear on the date of personal hearing, i.e, on 01.12.2023.

6.1 The question of provision of an opportunity of personal hearing to the assessee would arise only after taking note of the reply filed by the petitioner/assessee, and in the present case, the petitioner was called upon to appear for the personal hearing even before the reply was filed by the petitioner. As rightly contended by the learned counsel for the petitioner no useful purpose would be served by hearing the petitioner without going through the reply filed by the petitioner. Therefore, it is clear that the impugned order suffers from violation of principles of natural justice and against the provisions of Section 75 (4) of the TNGST Act, inasmuch as, an opportunity of hearing ought to have been granted, where any adverse decision is contemplated against taxpayer (petitioner in this case). In fact, this Court is of the view that had the reply filed by the petitioner was taken into consideration by the respondent and personal hearing opportunity was granted, obviously, the petitioner would have explained the respondent/Authority, whereby, the respondent would have dropped the proceedings against the petitioner or otherwise, would have provided the reasons for rejection. Therefore, this Court is inclined to set aside the impugned order.

6.2 Accordingly, this Court passes the following order:-

i) The impugned order issue in Form GST DRC-07 dated 29.12.2023 along with detailed order in GSTIN : 33AYAPM9399N1ZM/2017-18 dated 29.12.2023 for the assessment period 2017-18 are set aside.

ii) Consequently, the matter is remitted back to the respondent for fresh consideration, who shall fix a date for personal hearing by issuing a clear 14 days notice and hear the petitioner in person and peruse the records and redo the assessment in accordance with law.

7. In the result, the Writ Petition is allowed on the aforesaid terms No costs. Consequently, connected Miscellaneous Petitions are closed.

04.02.2025

sd

Index : yes/no
Neutral Citation : yes/no

To

The Deputy State Tax Officer (ST)
Avinashi Assessment Circle,
Avinashi.

Krishnan Ramasamy,J.,

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W.P.No.3588 of 2025

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