IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 05.02.2025
Coram
The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.3315 of 2025
and
W.M.P.Nos.3680 and 3682 of 2025

Metamorf Interiors and Designers Pvt. Ltd.,
rep. by its Director Mr.Nitin S.Kotekar
...Petitioner

Vs.

The Assistant Commissioner (ST)
Choolai Assessment Circle, North III
Room No.109, 1st Floor,
PAPJM Annex Building, Greams Road,
Chennai – 600 006. ...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 in the impugned order dated 25.04.2024 with reference No.ZD3304241922700 on the file of the respondent and to quash the same as arbitrary.

For Petitioner : Mr.S.Ramamurthy
for Mr.Saitanya Kesan
For Respondent : Mr. U.Baranidharan
Additional Government Pleader

Order

Heard Mr.S.Ramamurthy, learned counsel appearing for the petitioner and Mr.U.Baranidharan, learned Additional Government Pleader, 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 dated 25.04.2024 passed by the respondent and to quash the same.

3. The learned counsel for the petitioner would submit that the petitioner, on receipt of show cause notice in Form DRC-01 notice dated 20.10.2023, issued by the respondent, which were followed by reminder Notices Nos. 1 and 2 dated 04.01.2024 and 22.01.2024 respectively, filed a reply in Form DRC-06 dated 15.02.2024, however, reminder Notice No.3 was issued by the respondent dated 22.04.2024, stating the the reply, that was uploaded by the petitioner was not visible clearly, and thereby, the petitioner was required to produce the reply manually on 24.04.2024 and personal hearing was also fixed granting only one day, i.e. on 23.04.2024 and subsequently, the impugned order came to be passed on 25.04.2024.

3.1 The leaned counsel submitted that the petitioner was not granted sufficient time either for filing reply manually or appear for personal hearing, as the petitioner came to know of the issuance of third reminder notice dated 22.04.2024 after the lapse of the date of personal hearing, hence, the petitioner was unable to appear before the respondent, however, the impugned order came to be passed against the petitioner, stating as if, the petitioner has neither filed reply nor appeared for the personal hearing.

3.2 It is further contended that the impugned order has been passed on account of two issues firstly i) with regard to receipt of advance and secondly, ii) with regard to the payment of tax for the transaction/sales that took place outside the State; that insofar as the first issue is concerned, it is stated that mere receipt of the advance will not *ipso facto* amount to supply and as regards the second issue, it is contended that the petitioner had already remitted the tax with regard to the sales occurred outside the State by applying separate Registration number and clearly setting out such facts, the reply was filed, however, respondent has not taken into consideration of the reply filed by the petitioner in Form DRC-06. Therefore, it is contended that the impugned order is arbitrary, illegal and suffers from principles of violation of natural justice, as the petitioner has not been heard before passing the impugned order and that apart, the reply filed by the petitioner was not taken into consideration by the respondent while passing the impugned order.

4. The learned Additional Government Pleader for the respondent would submit that since the reply, that was uploaded by the petitioner was not visible clearly, the petitioner was asked to file reply manually on 24.04.2024 by virtue of the third reminder notice dated 22.04.2024 and was also called upon to appear for the personal hearing on 23.04.2024; despite the same, the petitioner neither filed reply annually, nor appeared during the personal hearing, therefore, the impugned order has been passed and therefore, it cannot be stated that no opportunity of personal hearing was afforded to the petitioner.

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

6. It is an undisputed fact that the petitioner, on receipt of the show cause notice in Form DRC-01 dated 20.10.2023, filed reply in Form DRC-06 dated dated 15.02.2024. However, according to the respondent, reply filed by the petitioner was not visible, hence, a reminder Notice No3 dated dated 22.04.2024 was uploaded by the respondent under the "View Additional Notice" Column, whereby, the petitioner was asked to appear on the very next day for the personal hearing, i.e. on 23.04.2024 and was required to file reply manually within 48 hours on 24.04.2024. Unfortunately, the said reminder Notice No.3 dated 22.04.2024 was unnoticed by the petitioner as the petitioner came to know of the said notice only after the lapse of the date fixed for personal hearing, i.e. on 23.04.2024 and hence, was not able to appear for the personal hearing. However, the respondent, without even waiting for the reply, which was infact, required to be produced by the petitioner manually, and without hearing the petitioner, the respondent proceeded to confirm the proposals contained in the show cause notice and passed the impugned order on 25.04.2024, stating as if, no reply was filed by the petitioner.

6.1 It is further seen that the impugned order has been passed with regard to two issues. The first issue pertains to the receipt of advance and the second issue relates to the sale transaction that took place outside the State. Insofar as the first issue is concerned, it is the contention of the petitioner that mere receipt of the advance will not *ipso facto* amount to supply and as regards the second issue, it is contended that the petitioner had already remitted the tax with regard to the sales occurred outside the State by applying separate GST number and all these facts have been clearly set out by the petitioner, in their reply in Form DRC-06 dated 15.02.2024, whereas, respondent, without taking into consideration of the reply filed by the petitioner in Form DRC-06, has passed the impugned order by stating that no reply was filed and the petitioner failed to appear for the personal hearing. In fact, this Court is of the view that had the reply filed by the petitioner was taken into consideration by the respondent in a proper perspective, obviously, the respondent would have dropped the proceedings against the petitioner or otherwise, would have provided the reasons for rejection.

6.2 If, according to the respondent, the reply filed/uploaded by the petitioner was not visible clearly, atleast, they ought to have granted sufficient time to the petitioner, so as to enable them in filing reply manually by sending notice through RPAD or any other mode of communication, which the petitioner could have easy access. Often the Officials attached to the respondent-Department not only in the present case, but also in umpteen numbers of case are continuously in the habit of merely uploading the Notice calling forth assessees' reply/Notice of Personal Hearing, automatically under the view 'Additional Notice Column", which assessees are failing to notice, (as the assessees could not be expected to view the On-line portal every now and then. Hence, this Court feels that the Officials attached to the respondent-Department could adopt the practice of sending Notice calling forth assessees' reply/Notice of Personal Hearing, by way of RPAD and by doing so, the assessees cannot take advantage of pleading ignorance of such notices and the precious time of the respondent-

Department would not get wasted.

6.3 Further, in the present case, it is seen that by virtue of the Reminder Notice No.3, dated 22.04.2024, the petitioner was called upon to appear for the personal hearing within 24 hours (i.e. on 23.04.2024) and file reply manually within 48 hours (24.04.2024) and within another 24 hours, the impugned order came to be passed i.e. 25.04.2024. Had the real intention of the respondent is to provide fair opportunity of hearing to the petitioner-assessee to put forth their defence, the same should be extended to the petitioner-assessee and it should not be a nominal one. Thus, in the present case, under the guise of providing opportunity, the petitioner-assessee has been called for to file reply within a short span of time. Therefore, as rightly pointed out by the learned counsel for the respondent, the impugned order is arbitrary, illegal and suffers from violation of principles of natural justice, as the reply filed by the petitioner was not properly appreciated. Hence, this Court is inclined to set aside the same.

7. Accordingly, this Court passes the following order:-

i) The impugned order dated 25.04.2024 is set aside.

ii) The matter is remanded back to the respondent for re-consideration.

iii) The petitioner is permitted to file reply manually within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereupon, the respondent is directed to provide an opportunity of personal notice by issuing a clear 14 days notice and hear the petitioner in full and thereafter, shall decide the matter in accordance with law.

8. The Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.02.2025

sd
Index : yes/no

To
The Assistant Commissioner (ST)
Choolai Assessment Circle, North III

Room No.109, 1st Floor,
PAPJM Annex Building, Greams Road, Chennai – 600 006.

Krishnan Ramasamy,J.,

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