IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.5303 of 2025
and
W.M.P.Nos.5881 & 5883 of 2025

M/s.Hajee Traders,
Rep by its Proprietor,
Mr.Hajee Mohamed Basil Ali,
No.113/4, Linghichetty Street,
Parrys, Chennai 600 001

... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Harbour Assessment Circle,
Integrated Commercial Taxes Office Complex,
Room No.312, 3rd Floor,
Elephant Gate Bridge Road,
Chennai 600 003.

2.The Deputy State Tax Officer (ST),
Harbour Assessment Circle,
Integrated Commercial Taxes Office Complex,
Room No.312, 3rd Floor,
Elephant Gate Bridge Road,
Chennai 600 003.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent issued Summary of Show Cause Notice in Form GST DRC-01 and attachment in DRC-01 dated 26.12.2023 and the consequential order passed by the 1st respondent issued in GSTIN: 33ACHPH6288C1ZQ/2018-19 dated 23.04.2024 along with DRC-07 and quash the same.

For Petitioner	:	Mr.G.Aniesh
For Respondent	:	Mr.T.N.C.Kaushik, Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 23.04.2024 passed by the 1st respondent.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in this case, the petitioner had entrusted a Consultant for filing reply to the show cause notice dated 26.12.2023 issued by the respondents. However, the petitioner's consultant had simply uploaded the Form GSTR-9 and Form GSTR-9C instead of filing a proper reply. Under these circumstances, the impugned order dated 23.04.2024 came to be passed by the 1st respondent.

4. Further, he would contend that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order, which is violation of principles of natural justice. In this regard, he referred to the provisions of Section 75(4) of the GST Act, 2017 and would submit that while confirming the demand, the respondent should have provided sufficient opportunity to the petitioner. Hence, he requests this Court to set aside the said impugned order.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents would submit that the reply filed by the petitioner was not an effective reply but a mere uploading of Form GSTR-9 and GSTR-9C. However, he would fairly admit that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, he requested this Court to pass appropriate order.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and also perused the materials available on record.

7. In the case on hand, the issue is as to whether the respondent had provided sufficient opportunity to the petitioner prior to the passing of impugned order.

8. As far as the opportunity for filing of reply is concerned, this Court does not find any fault on the part of the respondent. Though sufficient opportunity was provided, the consultant of the petitioner had failed to file any effective reply to decide the matter. Under these circumstances, the impugned order came to be passed by the 1st respondent.

9. As far as the opportunity of personal hearing is concerned, no such opportunity was provided to the petitioner subsequent the filing of reply. As per the provisions of Section 75(4) of the GST Act, if the 1st respondent is intend to pass any adverse order, it is mandatory for them to provide sufficient opportunity to the petitioner subsequent to the filing of reply and prior to the passing of assessment order. However, in this case, the impugned order has been passed against the petitioner without providing any such opportunity of personal hearing, which is not only contrary to the provisions of Section 75(4) of the GST Act, but also in violation of principles of natural justice.

10. In such view of the matter, this Court is inclined to set aside the impugned order dated 23.04.2024 passed by the 1st respondent on terms. Accordingly, this Court passes the following order:-

(i) The impugned order dated 23.04.2024 is set aside and the matter is remanded to the 1st respondent for fresh consideration, on condition that the petitioner shall pay 10% of disputed tax amount, to the respondent within a period of two weeks from today (18.02.2025) and the setting aside of the impugned orders will take effect from the date of payment of the said amount.

(ii) The petitioner is granted liberty to file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of copy of this order.

(iii) On filing of such reply/objection by the petitioner, the 1st respondent shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

18.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

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KRISHNAN RAMASAMY.J.,

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