IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.8964 of 2025
and
W.M.P.Nos.10067 and 10068 of 2025

Alpha Beta Trade Links
Represented by its Partner
Bharath Kumar Dughar
56/2, Audiappa Naicken Street,
Sowcarpet,
Chennai-600 079. ... Petitioner

..Vs..

The Assistant Commissioner (ST)(FAC),
Peddunaickenpet Assessment Circle,
No.209, Second Floor, Integrated Commercial Taxes
Office Building, Chennai North Division,
No.32, Elephant Gate Bridge,
Chennai-600 003. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to quash the impugned order dated 23.12.2023 bearing Ref.No.ZD3312231879190 in GST:33ABJFA6568P1ZS for FY 2017-18, issued under Section 73 of the TNGST Act, 2017 by the Respondent and consequently direct the 1st Respondent to initiate fresh assessment proceeding and then pass appropriate orders.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

ORDER

The challenge in this writ petition is to the order dated 23.12.2023 passed by the respondent and consequently direct the 1st respondent to initiate fresh assessment proceeding.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes), takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submits that the show cause notice dated 17.03.2023 was issued to the petitioner by uploading the same in the GST portal, without serving them through the physical mode. Therefore, the petitioner was not aware of the same and and hence could not file its reply. Subsequently, respondent passed the impugned assessment order dated

23.12.2023, demanding tax along with interest and penalty for the Assessment Year 2017-2018. The petitioner came to know of the impugned order after the receipt of the attachment letter from the respondent attaching the immovable property of the petitioner.

5. Further, he would submit that impugned assessment order came to be passed without affording an opportunity of personal hearing to the Petitioner and therefore the same is passed in violation of principles of natural justice.

6. The learned Additional Government Pleader (Taxes) appearing for the Respondent submitted that though the Show Cause Notice as well as the personal hearing notice were issued to the Petitioner, by uploading the same in the GST portal, the petitioner neither failed to submit its reply nor appeared for personal hearing and hence impugned assessment order came to be passed.

7. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 25% of the disputed tax liability made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their

claim, for which, the learned Additional Government Pleader (Taxes) appearing for the Respondent has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the Respondent and also perused the materials available on record.

9. In the present case, since the show cause notice is uploaded in the GST portal, the petitioner was unaware of the same and hence could not file its reply. Under such circumstances, impugned order came to be passed.

10. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

11. In the case on hand, the impugned order came to be passed without hearing the petitioner. Hence, this Court is of the view that the impugned order passed is in violation of principles of natural justice and it is just and necessary

to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 23.12.2023 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 23.12.2023 is set aside and the matter is remanded to the Respondent for fresh consideration on condition that as volunteered by the Petitioner, they shall pay 25% of disputed tax to the Respondent within a period of ***four weeks*** from the date of receipt of a copy of this order and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The Petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the 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.

(iv) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment, made on the immovable property of the Petitioner, cannot survive any longer and hence, it is lifted. As a sequel, the respondent is directed to release the attachment made on the immovable property of the petitioner, immediately upon the production of proof with regard to the payment of 25% as stated above.

12. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

19.03.2025

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

The Assistant Commissioner (ST)(FAC),
Peddunaickenpet Assessment Circle,
No.209, Second Floor, Integrated Commercial Taxes
Office Building, Chennai North Division,
No.32, Elephant Gate Bridge,
Chennai-600 003.

Krishnan Ramasamy,J.,

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