IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 19.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No. 5515 of 2025
and
W.M.P.Nos.6080 & 6081 of 2025

Tvl. Shankar and Col.
Rep.by its Proprietor Sivasankar ...Petitioner

Vs.

The State Tax Officer
Saravanampatti West Circle, CT Building
Dr.Balasundaram Road,
Coimbatore- 641 018. ...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 pertaining to the impugned order bearing Reference No.ZD330924187295Z dated 27.09.2024 issued by the respondent and to quash the same as arbitrary.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mrs.K.Vasanthamala
Government Advocate (T)

Order

Heard Mr.G.Derrick Sam, 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 issued by the respondent dated 27.09.2024 and to quash the same as arbitrary.

3. The learned counsel for the petitioner would submit that all the show cause notice/reminders/personal hearing notice, which culminated in the impugned order, were merely uploaded in the GST Portal under the "View Additional Tab", hence, the same were unnoticed by the petitioner, therefore, the petitioner could not file reply nor appear for the personal hearing, however, without hearing the petitioner, the impugned order came to be passed.

3.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside, as the petitioner has not been heard before passing the impugned order. However, it is stated that the petitioner is also ready and willing to deposit 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and remands the matter back to the Authority for fresh consideration, and thus, prays for appropriate orders.

4. The learned Government Advocate (T) for the respondent would submit that personal hearing notice was issued to the petitioner thrice, despite the same, the petitioner failed to appear, hence, the impugned order came to be passed. However, she fairly submitted that since the petitioner has voluntarily come forward to deposit 25% of the disputed tax, the prayer sought for by the petitioner may be considered.

5. Taking into consideration of the submissions made on either side and perusal of record, there is no dispute on the aspect that notices, which culminated in the impugned order were merely uploaded in the GST portal, which were unnoticed by the petitioner as the petitioner had no occasion to view the Portal, hence, the petitioner could not file reply or appear for the personal hearing, though personal hearing notice was issued thrice to the petitioner. Thus, it is crystal clear that the impugned order came to be passed against the petitioner, behind their back, as the respondent-Department has not taken any steps to serve any notices/communications through any physical mode of service, particularly, by RPAD (when the response is not received from the assessee), and made it available only in the GST Portal, which the petitioner was not aware.

6. Thus, the respondent passed the impugned order without even affording any opportunity of hearing to the petitioner, which is nothing by an ex parte order, as the same suffers from violation of principles of natural justice. Thus, once the order is passed in violation of principles of natural justice, this Court cannot impose any condition requiring the petitioner to make any deposit, however, since the petitioner, themselves, have voluntarily come forward to deposit 25% of the disputed tax, to which, the learned Government Advocate (T) is also agreable, this Court passes the following orders/directions:-

i) The impugned order dated 27.09.2024 passed by the respondent is set aside.

ii) Consequently, the matter is remanded to the respondent for fresh consideration.

iii) The petitioner is granted liberty to deposit 25% of the disputed tax, which the petitioner themselves have voluntarily came forward to make such payment within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks.

v) Thereupon, the respondent is directed to consider the reply and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter 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.

19.02.2025

sd

Index : yes/no
Neutral Citation : yes/no

To
The State Tax Officer
Saravanampatti West Circle, CT Building
Dr.Balasundaram Road,
Coimbatore- 641 018.

Krishnan Ramasamy,J.,

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