IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.9453 of 2025
and
W.M.P.Nos.10628 and 10629 of 2025

Bhandari Construction and Developers Pvt. Ltd.
Rep.by its VP Mr.Atish Kumar Ojha,
Aged 55 years,
Ground Floor, Plot No.12/Block No.9,
Manali New Town,
Edayanchavadi, Chennai,
Tamil Nadu-600103. ... Petitioner

..Vs..

The Deputy State Tax Officer-1,
Krishnagiri-1, Circle. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in order bearing Reference Number:ZD330823038329A dated 08.08.2023 on the file of the Respondent and quash the same.

For Petitioner : Mr.Prince Simon

For Respondent : Ms.P.Selvi
Government Advocate (Taxes)

ORDER

The challenge in this writ petition is to the order dated 08.08.2023 passed by the respondent and to quash the same.

2.Ms.P.Selvi, learned Government Advocate (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 intially the respondent issued Show Cause Notice dated 28.07.2023 to the petitioner and in the show cause, 30 days time was provided to file reply. But, the respondent without taking note of the same has passed the impugned order prematurely on 08.08.2023 demanding tax along with interest and penalty for the Assessment Year 2020-2021 and the same was also uploaded in the GST Portal. Thereafter the petitioner filed the rectification petition on 04.11.2023 and the respondent without considering the same has referred the matter to the recovery Department for enforcement proceedings. He further contended that the time for filing the appeal was also lapsed.

5. Further, he would submit that impugned assessment order came to be passed without hearing the Petitioner and therefore the same is passed in violation of principles of natural justice. Hence he prays to set aside the impugned order.

6. The learned Government Advocate (Taxes) appearing for the Respondent submitted that though the Show Cause Notice was issued to the petitioner, mentioning the date of personal hearing 31.07.2024 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 Government Advocate (Taxes) appearing for the Respondent has no serious objection.

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

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 assessment order dated 08.08.2023 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein 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.

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
arr

Krishnan Ramasamy,J.,

arr

To

The Deputy State Tax Officer-1,
Krishnagiri-1, Circle.

W.P.No.9453 of 2025

19.03.2025