IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.9975 of 2025
and
W.M.P.Nos.11174 and 11180 of 2025

M/s.Amma Bhagwan Enterprises
GSTIN:33 AFPPJ7480P1ZN
Authorized Signatory, Rashmi Ranjan Jena
Office at No.18-B
Gopal Reddy Industrial Area,
Jambuli,
Chennai 600 118. ... Petitioner

..Vs..

The Assistant Commissioner (ST) (FAC)
Office of the Assistant Commissioner (ST)(FAC)
Kodungaiyur Assessment Circle,
Integrated Commercial Taxes Building
No.32, Elephant Gate Bridge Road,
Chennai 600003. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the impugned order GST Form DRC 07 being passed by the Respondent Authorities Dated:26.06.2023 reference number ZD330623119833H dated 26/06/2023 for the F.Y.2021-22 demanding Short payment of taxes, CGST Rs.82,140/- and SGST Rs.82,140/-

interest of CGST Rs.77,606/- SGST Rs.77,606/- and penalty of CGST Rs.10,000/- and SGST Rs.10,000/- Total Amounting Rs.3,39,090/- (Rupees Three Lakhs thirty nine thousand and ninety only).

For Petitioner : Mr.M.Prakash

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

ORDER

The challenge in this writ petition is to the order dated 26.06.2023 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 the show cause notice dated 06.12.2022 followed by reminder dated 13.06.2023, fixing the date for personal hearing as 13.06.2023 was issued to the petitioner. Thereafter, the petitioner filed its reply on 20.07.2023. But the respondent without

considering the same has passed the impugned assessment order dated 26.06.2023, demanding tax along with interest and penalty for the Assessment Year 2021-2022 and the same was also uploaded in the GST Portal. The petitioner came to know of the impugned assessment order only on 26.06.2023. Subsequently recovery notice was issued by the respondent on 16.02.2024.

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. 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 as well as the personal hearing notice were issued to the Petitioner, 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.

9. In the present case, it is the case of the petitioner that though show cause notice followed by reminder was issued to the petitioner, the petitioner neither failed to submit its reply nor appeared for personal hearing. 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 assessment order dated 26.06.2023 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 26.06.2023 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, if any made on the bank account of the Petitioner, cannot survive any longer and hence, it is lifted. As a sequel, the respondent is directed to instruct the concerned bank to release the attachment on the bank account 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.

24.03.2025

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

The Assistant Commissioner (ST) (FAC)
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Chennai 600003.

Krishnan Ramasamy,J.,

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