IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.9427 of 2025
and
W.M.P.Nos.10594 and 10598 of 2025

Tvl.Sri Ayyanar Stores,
Rep by its Proprietor
96 SC Main Road,
Valapady
Salem – 636 115. ... Petitioner

..Vs..

1. Commercial Tax Officer
   Ayyothyapattinam
   Salem.

2. State Tax Officer
   Ayyothyapattinam Circle
   No.17 Pitchards Road
   Salem-636 007. ... 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 records relating to the impugned order in Reference No.ZD330824129024O dated 16.08.2024 passed by the 1st Respondent along with annexures and quash the same.

For Petitioner : Ms.Sri Visva Priya

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

ORDER

The challenge in this writ petition is to the order dated 16.08.2024 passed by the 1st respondent and to quash the same.

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

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 21.05.2024 was issued to the petitioner. Due to the ill health of the petitioner's accountant, the petitioner was unable to understand the issues raised in the show cause notice. Therefore, the petitioner was unable to file its reply. Subsequently, the respondent passed the impugned assessment order dated 16.08.2024, demanding tax along with interest and penalty for the Assessment Year 2019-2020.

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 she prays to set aside the impugned order.

6. The learned Additional Government Pleader (Taxes) appearing for the Respondent submitted that though the Show Cause Notice as well as the personal hearing notices were issued to the Petitioner, neither filed 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 Respondents and also perused the materials available on record.

9. In the present case, due to ill health of the petitioner's accountant, the petitioner was unable to understand the issues raised in the show cause notice and therefore the petitioner was unable to 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

assessment order dated 16.08.2024 passed by the 1st Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 16.08.2024 is set aside and the matter is remanded to the 1st 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.

20.03.2025

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

1. Commercial Tax Officer
   Ayyothyapattinam
   Salem.

2. State Tax Officer
   Ayyothyapattinam Circle
   No.17 Pitchards Road
   Salem-636 007.

Krishnan Ramasamy,J.,
arr

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