IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 11589 of 2025
AND
WMP NO. 13096 OF 2025,WMP NO. 13097 OF 2025

M/S.Ganga Agencies
(GSTIN 33AHQPD4696N1ZO),
Rep. by its Proprietor S.Devaraj,
4, Corporation Shopping Complex,
Dr. Nanjappa Road,
Coimbatore - 641 018.

Petitioner(s)

Vs

The Assistant Commissioner (ST)(FAC)
Ramnagar Assessment Circle,
CT Building, Dr.Balasundaram Road,
Coimbatore 641 018.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the Impugned Order in Form GST DRC 07 bearing reference no. ZD3308242474194/2019-20 dated 28.08.2024 issued by the respondent and quash the same.

For Petitioner(s): Mr.G.Derrick Sam

For Respondent(s): Ms.Amirta Poonkodi Dinakaran,
Government Advocate (t)

ORDER

This writ petition has been filed by the petitioner seeking to call for the records pertaining to the Impugned Order in Form GST DRC 07 bearing reference No. ZD3308242474194/2019-20 dated 28.08.2024 issued by the respondent and quash the same.

2.Ms.Amirta Poonkodi Dinakaran, 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 admission stage itself.

4.Learned counsel for the petitioner would submit that the petitioner received a show cause notice in DRC-01 on 27.05.2024. In response, the petitioner filed their reply to the said show cause notice on 02.07.2024. However, the respondent without considering the reply filed by the petitioner and without providing an opportunity of personal hearing, passed the impugned order on 28.08.2024 and the same was uploaded in the GST portal. The petitioner came to know about the impugned order only when their bank account was attached. He would further submit that the petitioner is ready and willing to pay 25% of the disputed tax demand in respect of the impugned assessment period and prayed to set aside the impugned order directing the respondent to permit the petitioner to provide an opportunity of personal hearing so that the petitioner would be able to substantiate their case.

5.Learned Government Advocate appearing for the respondent would fairly submit that the petitioner filed their reply for the show cause notice dated 27.05.2024 and the same was not considered and the without providing an opportunity of personal hearing, the impugned order came to be passed and as per the voluntary submissions made by the learned counsel for the petitioner, subject to the deposit of 25% of the disputed tax demand by the petitioner in respect of the impugned assessment period, if the Court feels it appropriate and it is a fit case for re-consideration, this Court may consider and pass orders.

6.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the repondent and perused the materials available on record.

7.Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the petitioner has filed their reply on 02.07.2024 to the show cause notice dated 27.05.2024. However, in the impugned order dated 28.08.2024, the respondent has recorded that the petitioner has not filed their reply to the said show cause notice and confirmed the proposal made in the show cause notice, which shows that the impugned order has been passed with non-application of mind. Thus, this Court is of the view that the impugned assessment order has been passed without affording any opportunity of personal hearing to the petitioner, confirming the proposals contained in the show cause notice, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

8.For the reasons stated above, this Court is inclined to set aside the impugned order dated 28.08.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside on condition that the petitioner deposits 25% of the disputed tax amount in respect of the impugned assessment period, as agreed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

(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) Upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, the first respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith.

9.With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

01-04-2025

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

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To

The Assistant Commissioner (ST)(FAC)
Ramnagar Assessment Circle, CT Building,
Dr.Balasundaram Road,
Coimbatore 641 018.

KRISHNAN RAMASAMY J.

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