IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**
W.P.No.12214 of 2025
and
W.M.P.Nos.13772 & 13774 of 2025

Tvl. Rathna and Co. Srinidhi Rathna Theatre,
rep. by its Managing Partner- T.M.Manoharan ...Petitioner

Vs.

The Deputy State Tax Officer – I (FAC)
Office of the Deputy Commercial Tax Officer,
Old Kumbakkonam Road,
Commercial Tax Building, 1st Floor, near Taluk Office,
Panruti – 607 106. ...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 relating to the impugned proceedings passed by the respondent in the impugned order in GSTIN : 33AAFR5132J2ZF/2019-20 dated 30.08.2024 and summary of order under Section 73 in Form GST DRC-07 vide Ref.No.ZD3308242883048 dated 30.08.2024 along with consequential proceedings order of rejection of rectification application dated 28.02.2025 FY 2019-2020 and to quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

Order

Heard Mrs.R.Hemalatha learned counsel appearing for the petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader (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 passed by the respondent dated 30.08.2024 and summary of order under Section 73 in Form GST DRC-07 dated 30.08.2024 along with consequential proceedings order of rejection of rectification application dated 28.02.2025 FY 2019-2020 and to quash the same.

3. The learned counsel for the petitioner would submit that a show cause notice was issued by the respondent pointing out four defects; that the petitioner filed reply answering to three defects, pursuant to which, proceedings in regard to three defects were dropped, but, in respect of the Defect No.4 since no reply was filed, which is due to the fact that the Accountant engaged by the petitioner inadvertently failed to reply to the defect No.4, the impugned order came to be passed confirming the proposal with regard to the said defect No.4; that aggrieved by the said impugned order, the petitioner filed a Petition seeking for Rectification of the order dated 30.08.2024 however, the said Rectification Petition came to be rejected on 28.02.2025, and therefore, the petitioner is before this Court by way of present Writ Petition challenging the order dated 30.08.2024 and other consequential proceedings.

3.1 The learned counsel also fairly submitted that in the event, this Court is inclined to set aside the impugned order, the petitioner is ready and willing to deposit 25% of the disputed tax, and thus, prays for appropriate orders.

4. The learned Additional Government Pleader (T) for the respondent justified the impugned order passed by the respondent by contending that since the petitioner filed reply pertaining to three defects, the proposals in respect of those three defects were dropped, and as the petitioner failed to file reply to defect No.4, the proposal in respect of defect No.4 is confirmed and the impugned order came to be passed and therefore, the petitioner cannot have a say that the impugned order is arbitrary or illegal, and if at all, the petitioner has any grievance, the same can be redressed only before the Appellate Authority by way of Appeal and therefore, prays for dismissal of the Writ Petition.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. In the case on hand, it is seen that the respondent has issued a show cause notice pointing out four defects. The petitioner, on receipt of such show cause notice filed reply, answering to three defects, which resulted in dropping of the proceedings in respect of those three issues. So far as the defect No.4 is concerned, the petitioner failed to file reply, hence, the respondent confirmed the proposals contained in the show cause notice with regard to defect No.4 and passed the impugned order dated 30.08.2024.

Though it is contended by the learned counsel for the petitioner that the

the petitioner's Accountant inadvertently failed to file reply to the Defect No.4, this Court is unable to accept the said contention and therefore, is not inclined to entertain the Writ Petition. However, taking into consideration of the fact that the impugned order came to be passed without affording an opportunity of personal hearing to the petitioner, which fact, was in fact, recorded by the respondent in the assessment order passed, this Court is of the view that, it would be appropriate to direct the petitioner to agitate their issue before the Appellate Authority by way of filing an Appeal.

Accordingly, the Writ Petition is disposed of granting liberty to the petitioner to prefer an Appeal challenging the order passed by the respondent, which are impugned herein before the Appellate Authority by making deposit of 15% of the disputed tax in addition to making deposit of 10% of the disputed tax, which is pre-condition for entertaining the Appeal.

Upon production of the proof with regard to such payments made by the petitioner, the Appellate Authority is directed to entertain the Appeal and decide the matter in accordance with law without rejecting the same on the ground of limitation. No costs. Consequently, connected Miscellaneous Petitions are closed.

04.04.2025

sd

Index : yes/no
Neutral Citation : yes/no

To

The Deputy State Tax Officer – I (FAC)
Office of the Deputy Commercial Tax Officer,
Old Kumbakkonam Road,
Commercial Tax Building, 1st Floor, near Taluk Office,
Panruti – 607 106.

Krishnan Ramasamy,J.,

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