IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.14484 of 2025
and
W.M.P.Nos.16362 & 16364 of 2025

M/s Cambriya Homes
Rep by its Prop Mr.V. Karthikeyan
No. 13/2 Nehru Street Kandanchavadi
Chennai Tamil Nadu - 600096. ...Petitioner

Vs.

1 The State Tax Officer
Sholinganallur Assessment Circle No.240
2nd Floor Integrated Commercial Taxes and
Registration Building Government Farm
Village Nandhanam Ch-600 035.

2 The Bank Manager
Kotak Mahindra Bank Perungudi Branch 14
OMR Road Kandanchavadi
Perungudi Chennai -600096 ...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the Assessment Order dated 30-09-2024 via DRC 07 in GSTIN.33BIDPK1628L1ZC/2019-20 (Impugned Order) issued by the 1st respondent and quash the same as illegal and arbitrary and direct the 1st respondent to remove the recovery notice dated 20-02-2025 and remand back the matter to the 1st respondent.

For Petitioner : Mr.A.Dhamodaran
For Respondent-1 : Mr.V.Prashanth Kiran
Government Advocate (T)

Order

Heard Mr.A.Dhamodaran learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (T) who takes notice on behalf of the first 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 first respondent dated 30-09-2024 and to quash the same.

3. The learned counsel appearing for the petitioner would submit that a show cause notice was issued by the first respondent dated 13.08.2024 and the same was returned by the Postal Department with the remands,"Unclaimed"; since the petitioner's Office was closed during that period; that thereafter, the petitioner received a reminder notice from the first respondent to appear for the personal hearing with all relevant documents on 26.09.2024, but, since the petitioner's Consultant was not well, he was not able to prepare the reply and hence, the petitioner could not attend the personal hearing, however, the petitioner, who was under the hope that another opportunity of hearing would be granted before passing the assessment order, was getting prepared for filing reply along with all relevant documents. However, the first respondent, without granting an affording an opportunity of personal hearing passed the assessment order.

3.1 Hence, the learned counsel for the petitioner contended that the impugned assessment order passed by the respondent suffers from violation of principles of natural justice and is liable to be aside. However, it is stated by the learned counsel for the petitioner that the petitioner is also ready and willing to pay 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and remands the matter back to the Authority for fresh consideration and thus, prays for appropriate orders.

4. The learned Government Advocate (T) for the first respondent fairly submitted that since the petitioner has voluntarily come forward to deposit 25% of the disputed tax, the prayer sought for by the petitioner may be considered.

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

6. In the present case, it is seen that the first respondent has issued a show cause notice to the petitioner via. RPAD. Since the petitioner's Office was closed during that period, the said notice returned with an endorsement, "Unclaimed". Thereafter, the petitioner was issued with a first reminder directing the petitioner to appear for the personal hearing on 26.09.2024. As on the said date, the petitioner's Consultant was unwell, the petitioner was not able to file reply and appear before the first respondent. Thereafter, the petitioner was under the hope that the first respondent would provide an another opportunity of personal hearing, inasmuch as, in terms of Section 75(4) of the Act, "even if no reply was filed, it was mandatory on the part of the respondent to provide opportunity to assessee for personal hearing, where an adverse decision is contemplated against the assessee". Therefore, it is clear that in violation of said provision, the first respondent has passed the impugned order and hence, this Court is inclined to set aside the impugned order, as the same suffers from the violation of principles of natural justice. Thus, once the order is passed in violation of principles of natural justice, this Court cannot impose any condition requiring the petitioner to make any deposit, however, considering the fact that the petitioner has come forward to deposit 25% of the disputed tax in the event the impugned order is set aside, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned order passed by the first respondent dated 30-09-2024 is set aside.

ii) Consequently, the matter is remanded to the first respondent for fresh consideration.

iii) The petitioner is granted liberty to deposit 25% of the disputed tax, which the petitioner themselves have voluntarily came forward to make such payment within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks.

v) Thereupon, the first respondent is directed to consider the reply and shall issue a 14 clear days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

and

vi) So far as the recovery notice dated 20-02-2025 issued by the first respondent is concerned, once, the impugned order is set aside, any proceeding initiated in furtherance of the impugned proceedings can no longer survive. However, respondent-Department, upon verification of the proof with regard to the payment of 25% of the disputed tax made by the petitioner, is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith and permit the petitioner to operate the bank account.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.04.2025

sd
Index : yes/no
Neutral Citation : yes/no

To

1 The State Tax Officer
Sholinganallur Assessment Circle No.240
2nd Floor Integrated Commercial Taxes and
Registration Building Government Farm
Village Nandhanam Ch-600 035.

2 The Bank Manager
Kotak Mahindra Bank Perungudi Branch 14
OMR Road Kandanchavadi
Perungudi Chennai -600096

Krishnan Ramasamy,J.,

sd

W.P.No.14484 of 2025

24.04.2025