IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.15319 of 2025
& W.M.P.Nos.17309 & 17311 of 2025

M/s.KCM Earth Movers,
Rep by its Proprietor, B.Chinnadurai,
No.1/838, Periya Kovilambakkam,
1st Street, Kovilambakkam, Chennai 600 129

... Petitioner

Vs.

1.The Deputy Commercial Tax Officer I,
Madipakkam Assessment,
Room No.233-Integrated Commercial Taxes Building,
Government Farm Village, Nandanam,
Chennai 600 035

2.The Deputy Commissioner (ST)(FAC),
Tambaram Zone,
Room No.422, 4th Floor, PAPJM Building,
Greams Road, Chennai

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in the file of the Impugned Order issued by the 1st respondent electronically in Common Portal vide FORM GST DRC-07 Ref. No. ZD330824301934F dated 31.08.2024 and to QUASH the same with consequential relief to DIRECT the 2nd respondent to de-freeze the petitiones Current Account No. 1265115000003038 maintained with Karur Vysya Bank, Velacherry Branch, Chennai

For Petitioner : Ms.Akila S

For Respondent : Ms.P.Selvi,
Government Advocate

ORDER

This writ petition has been filed challenging the impugned assessment order dated 31.08.2024 passed by the 1st respondent.

2. Ms.P.Selvi, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in this case, initially, the show cause notice dated 24.05.2024 was issued by the respondent, for which, a detailed reply dated 19.07.2024 has been filed by the petitioner. However, without providing any opportunity of personal hearing and without properly considering the reply filed by the petitioner, the impugned assessment order came to be passed by the respondent, which is a clear violation of principles of natural justice.

4. Further, he would submit that the petitioner is willing to pay 25% of the disputed tax amount to the respondents. Hence, he requests this Court to grant an opportunity to the petitioner to present their case before the respondent by setting aside the impugned order.

5. On the other hand, the learned Government Advocate appearing for the respondents would submit that the reply filed by the petitioner is inadequate to decide the issue raised by the respondent.

However, she has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned orders. Therefore, she requested this Court to remit the matters back to the respondent, subject to the payment of 25% of the disputed tax amount by the petitioner.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and also perused the materials available on record.

7. In the case on hand, initially, the show cause notice was issued by the respondent, for which, a detailed reply was filed by the petitioner. However, the same was not considered by the respondent while passing the impugned order.

8. Further, it is evident that the impugned assessment order came to be passed without affording any opportunity of personal hearing to the petitioner, confirming the proposals contained in the show cause notice.

Normally, if the respondents are intend to pass an adverse order against an Assessee, it is mandatory for them to provide sufficient opportunity to the Assessee prior to the passing of assessment order. However, in this case, no such opportunity was provided prior to the passing of impugned order. In such view of the matter, it is clear that the impugned order is not only in contrary to the provisions of Section 75(4) of the GST Act, but also in violation of principles of natural justice.

9. That apart, it was submitted by the learned counsel for the petitioner that the petitioner is willing to pay 25% of the disputed tax amount to the respondent. In such view of the matter, this Court is inclined to set aside the assessment order dated 31.08.2024 passed by the 1st respondent. Accordingly, this Court passes the following order:-

> (i) The impugned assessment order dated 31.08.2024 is set aside and the matter is remanded to the 1st respondent for fresh consideration on condition that the petitioner shall pay 25% of disputed tax amount to the respondents within a period of four weeks from the date of receipt of a copy of this order.

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 additional reply/objection, if any, along with the required documents, if any, within a period of three weeks from the date of payment of amount as stated above.

(iii) On filing of such reply/objection by the petitioner, the 1st 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 orders itself have been set aside, this Court is of the opinion that the attachment made on the bank account of the petitioner cannot survive any longer and hence, it is to be lifted. As a sequel, the 2nd respondent is directed to instruct the concerned bank to release the attachment, and de-freeze the bank account of the petitioner, immediately upon the production of a copy of this order.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

29.04.2025

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

To

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