IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.40055 of 2024
and
W.M.P.Nos.43329 and 43331 of 2024

BSD Ventures,
Rep. by its partner Mr.V.Sumanth Reddy,
No.147, 3rd Floor, Vepery High Road,
Periamet, Chennai 600 003. .. Petitioner

Vs.

The State Tax Officer,
(Formerly known as Commercial Tax Officer),
Vepery: North III: Chennai North,
No.1 (PAPJM) Annex Building, Room No-A-110,
1st Flr, Greams Road, Chennai 600 006.
.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order in reference ZD330824211484J/2019-20 dated 23.08.2024 passed by the respondent and the consequential rejection order bearing Reference No: ZD330924005214S/2019-20 dated 20.09.2024 passed by the respondent and quash the same.

For Petitioner : Mr.S.Ramanan

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 23.08.2024, on the premise that the impugned order suffers from violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of Trading, Manufacturing, Processing, Importing and Exporting of Leather and Leather Products and is registered under the GST Act. During the relevant period of 2019-20, the petitioner had filed the returns and paid appropriate taxes. However, on scrutiny of the returns filed by the petitioner, the following discrepancies were noticed:

(i) Excess ITC claimed on account of non-reconciliation of information.

(ii) ITC to be reversed on non-business transactions and exempt supplies.

(iii) Under declaration of ineligible ITC.

3. It is submitted by the learned Counsel for the petitioner that a show cause notice in Form DRC 01 was issued to the petitioner on 31.05.2024. In response to the show cause notice the petitioner filed its reply dated 29.06.2024 and 16.08.2024. Thereafter 3 reminder notices were also issued to the petitioner viz., 20.08.2024, 21.08.2024 and 22.08.2024 with personal hearing on 21.08.2024, 22.08.2024 and 23.08.2024. In response the petitioner filed its reply on 23.08.2024 the same day on which the last of the three personal hearings was fixed. However, the impugned order does not even refer to the reply filed on 23.08.2024, instead the impugned order is passed on the very same day on which the final personal hearing was fixed i.e., 23.08.2024. It is further submitted by the learned counsel for the petitioner that a look at the reference column of the order would also indicate that the respondent authority has not even considered the reply dated 23.08.2024. It was thus submitted that the impugned order suffers from gross non application of mind.

4. The learned counsel for the respondent would however submit that this is an order which is appealable and therefore this Court ought

not to entertain the present writ petition.

5. This Court is conscious of the fact that writ petitions under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is availed. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

6. On considering the submissions of both sides this Court is of the view that the impugned order does suffer from non application of mind inasmuch as despite the fact that the petitioner had submitted its reply dated 23.08.2024 the respondent authority has proceeded to pass the order on the very same day on which the personal hearing was fixed and without even setting out or making any reference to the reply dated 23.08.2024.

7. In view thereof, the impugned order is set aside. It is open to the respondent to proceed to complete the assessment after affording the petitioner a reasonable opportunity of hearing.

8. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.01.2025

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

To:

The State Tax Officer,
(Formerly known as Commercial Tax Officer),
Vepery: North III: Chennai North,
No.1 (PAPJM) Annex Building, Room No-A-110,
1st Flr, Greams Road, Chennai 600 006.

MOHAMMED SHAFFIQ, J.

spp

W.P. No.40055 of 2024
and
W.M.P.Nos.43329 and 43331 of 2024

06.01.2025