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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19445 of 2024
WMP.Nos.21271 to 21272 of 2024

M/s.Chellamani and Co., by its Partner, Ponnumani George
Chennai-94 Petitioner

Vs

1. The Deputy Commercial Tax Officer, Vadapalani Central-I
   Chennai-6

2. The Assistant Commissioner (ST), Vadapalani Assessment Circle
   Chennai-6 Respondents

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the order dated 25.12.2023 in Ref.No.ZD331223191982B/2017-18 of the 1st Respondent and to quash the same.

For Petitioner : Ms.V.Vijayalakshmi

For Respondents : Mr.G.Nanmaran, Special Government Pleader

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order dated 25.12.2023 in Ref.No.ZD331223191982B/2017-18 of the 1st Respondent and to quash the same.

2. The Petitioner Company, which is engaged in the business of home

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appliances, was issued with a show cause notice, dated 11.08.2023, regarding ITC mismatch and another notice dated 26.09.2023 followed by a reminder, dated 08.11.2023. It is stated that due to medical conditions, the the Partner of the Petitioner Firm could not file a reply within time and also to appear for a personal hearing, though they are in possession of relevant documents. Thereafter, the impugned order dated 25.12.2023 came to be passed, demanding tax with penalty and interest on the ground that the Petitioner did not send a reply to the show cause notice and also did not appear in person. The Petitioner came to know about the impugned assessment order only on receipt of the demand notice, dated 09.05.2024 issued by the 1st Respondent. Hence, contending that the impugned order was passed, without affording an opportunity of filing a reply, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice, this Writ Petition has been filed.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.

4. The learned counsel for the Petitioner would submit that though there were two show cause notices followed by a reminder notice, due to medical conditions, the Petitioner could not file a reply along with necessary documents to establish their case, which is neither wanton nor wilful, however, the impugned order came to be passed, without affording an opportunity of filing a reply to the impugned show cause notice, including a personal hearing to the Petitioner, thereby violating the principles of natural

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justice. The learned counsel would further submit that the Petitioner would be able to establish their case if an opportunity is provided and that the Petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

5. The learned Government Advocate for the Respondents would submit that even after receipt of two show cause notices followed by a reminder sent by the Respondent Authority, since the Petitioner did not file a reply to the show cause notice and also did not appear in person, the impugned assessment order was passed and that appropriate orders may be passed, by putting the Petitioner on terms.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is seen that the impugned assessment order was passed without affording an opportunity to file a reply, including an opportunity of personal hearing, as is evident from the impugned order assessment order. There is no dispute about the service of show cause notices and the subsequent reminder on the Petitioner. When the Respondent Authority intends to pass an assessment order, it should be done only after affording an opportunity of filing a reply to the show cause notice, including a personal hearing to the Assessee and thereafter, considering the reply of the Assessee, as provided under law, but in this case, the Respondent Authority failed to do so. The reason assigned by the Petitioner that due to medical conditions, the Partner of the Petitioner Firm was not able to send a reply and also to appear for personal hearing, in the

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opinion of this Court, appears to be genuine. According to the Petitioner, the Petitioner would be able to establish their case if an opportunity is provided. In such circumstances, this Court is of the view that the impugned order came to be passed, without affording opportunity of filing a reply to the show cause notice, including a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice and hence, it is just and necessary to provide an opportunity to the Petitioner to establish their case, on merits and in accordance with law, however, by putting the Petitioner on terms.

7. For the reasons stated above, the matter is remanded back to the 1st Respondent for consideration afresh, by setting aside the impugned order on condition that the Petitioner shall pay 10% of the disputed tax demand, within a period of four weeks from the date of receipt of a copy of this order. Within two weeks thereafter, the Petitioner is permitted to submit a reply to the impugned show cause notice, by enclosing all relevant documents. Upon receipt of such reply and upon being satisfied that 10% of the disputed tax demand was received, the 1st Respondent is directed to provide a reasonable opportunity to the Petitioner, including a personal hearing and consider the reply along with the relevant documents to be submitted by the Petitioner and thereafter, pass fresh orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of the Petitioner's reply.

8. With the above directions and terms, this Writ Petition is disposed of. No

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costs. Consequently, the connected MPs are closed.

06.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
Srcm

To

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   Chennai-6

2. The Assistant Commissioner (ST), Vadapalani Assessment Circle
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KRISHNAN RAMASAMY, J.

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