

W.P.No.30494 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 20.10.2023

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.30494 of 2023

and

W.M.P.No.30135 of 2023

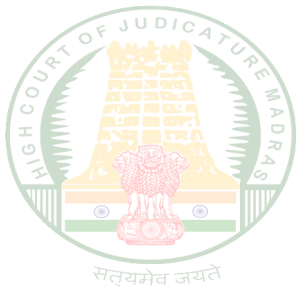
Star Health and Allied Insurance Company Ltd.,
rep. by Authorized Signatory,
Mr.Nitesh Kambli.

...Petitioner

VS.

1. The Commissioner of ST
Large Taxpayers Unit,
Integrated Commercial Taxes Building
Nandanam, Chennai – 35.
2. Deputy Commissioner (ST) -II
Large Taxpayers Unit,
Integrated Commercial Taxes Building
Nandanam, Chennai – 35.
3. The Joint Commissioner (GST Appeals)
Ezhilagam, Chepauk, Chennai – 600 005.

Respondents



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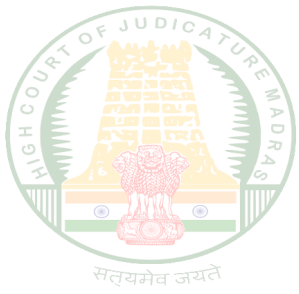
Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus to call for records of the impugned order made in GSTIN NO/33AAJCS4517L1Z5/2019-20, dated 29.06.2023, whereby, the respondent No.2 has confirmed the demand of Rs.103,68,32.830 and remand the matter for fresh adjudication or others order as the Court may deem fit by quashing the impugned show cause notice, dated 21.04.2023, reference No.ZD330423103538P issued by the second respondent or other orders as the court may deem fit; directing the Appellate Authority to entertain the petitioner's Appeal without insistence of pre-deposit of 10% of the disputed tax liability as per Section 107 of the Tamil Nadu Goods and Services Tax Act, 2017.

For Petitioner : Mr.Kamal Sawhney
and Mr.Deepak Thakur
for M/s.S.M.Vivek Anandh

For Respondents : Mr.V.Prashanth Kiran
Govt. Advocate

ORDER

Heard Mr.Kamal Sawhney and Mr.Deepak Thakur learned counsel representing Mr.S.M.Vivek Anandh, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate appearing on behalf of the respondents. By consent of the parties, the main Writ Petition is taken up for final disposal at the stage of admission itself.



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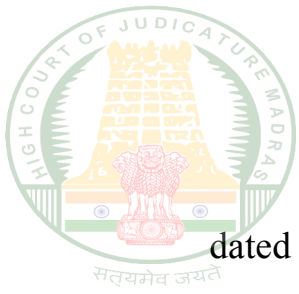
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In this Writ Petition, the petitioner has challenged both the impugned order of assessment for the year 2019-20 dated 29.06.2023, whereby, the second respondent has raised a demand of Rs.103,68,32.830 against the petitioner and the show cause notice dated 21.04.2023 which formed the basis for issuance of aforesaid impugned order of assessment and sought for quashment of both orders dated 21.04.2023 and 29.06.2023 and consequently, for a mandamus, directing the Appellate Authority to entertain the petitioner's Appeal without insistence of pre-deposit of 10% of the disputed tax liability as per Section 107 of the Tamil Nadu Goods and Services Tax Act, 2017.

3. The case of the petitioner in gist and kernel is as follows:-

i) The petitioner is an assessee on the files of the respondent-Department under the provisions of Tamil Nadu General Sales Tax Act, 2017 (hereinafter, referred to as 'TNGST Act').

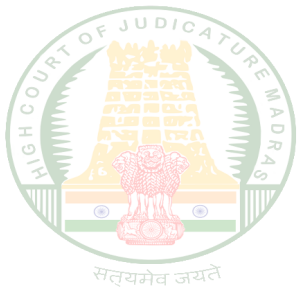
ii) Initially, the second respondent issued a notice dated 22.12.2022, pointing out certain discrepancies, to which, the petitioner submitted a reply



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dated 09.01.2023. The second respondent without considering the said reply, issued the impugned show cause notice dated 21.04.2023 (1st Hearing). The petitioner vide letter dated 05.05.2023 sought time to file reply to the show cause notice dated 21.04.2023 and filed reply on 30.05.2023. Thereafter, the second respondent issued a notice dated 16.06.2023 (II Hearing) fixing the date of personal hearing on 20.06.2023. Since the said notice dated 16.06.2023 does not speak of anything about the reply filed by the petitioner, the petitioner assumed that the reply filed by the petitioner has not been considered by the second respondent and hence, the petitioner reiterated the said reply on 16.06.2023.

iii) Thereafter, the second respondent issued another personal hearing notice on **21.06.2023 (III Hearing)** at 9.52 p.m. and fixed the hearing on 23.06.2023 at 11.00 p.m. and for production of documents relied on by the petitioner in their reply. The petitioner requested the second respondent to provide time for furnishing the documents. However, the second respondent rejected the petitioner's request on the ground that three hearing opportunities have been granted and confirmed the proposals contained in the show cause notice dated 21.04.2023 and passed an order of assessment on 29.06.2023.



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iv) Challenging the order of assessment dated 29.06.2023 as well as the show cause notice dated 21.04.2023, the petitioner has filed the present Writ Petition.

4. Mr.Kamal Sawhney, learned counsel for the petitioner at the threshold submitted that the impugned orders suffer from violation of principles of natural justice and are liable to be aside. The learned counsel also assailed the impugned orders on the following other grounds:-

i) Firstly, the learned counsel submitted that though initially, the second respondent issued a notice dated 22.12.2022 under Section 73 (5) of the Act pointing out certain discrepancies and highlighting the details of alleged tax payable by the petitioner, the petitioner submitted a reply dated 09.01.2023, explaining that the discrepancies pointed out by the second respondent is not correct. However, the second respondent without considering the said reply and without assigning any reasons as to why the explanation/reply made by the petitioner dated 09.01.2023 is not acceptable issued the impugned show cause notice dated 21.04.2023 (First Hearing), whereby, the petitioner has been demanded to pay a outstanding tax due of Rs.103,68,32.830. In this context,



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the learned counsel drawn this Court's attention to Section 142 of the Act and submitted that, as per said Section, it is mandatory for the Assessing Officer to provide grounds for raising tax demand in the show cause notice, however, in the present case, in the impugned show cause notice, nothing has been discussed with regard to the points/defence raised/taken by the petitioner in their reply, dated 09.01.2023, except making vague statement that the petitioner did not furnish documentary evidence.

ii) Secondly, the learned counsel contended that though the second respondent by virtue of impugned show cause notice dated 21.04.2023 raised a demand of Rs.103,68,32,380, the basis for such demand has not been mentioned anywhere in the show cause notice. The learned counsel also pointed out that the tax demanded in the show cause notice did not match with the tax demand in the discrepancies pointed by the second respondent in their earlier notice dated 22.12.2022.

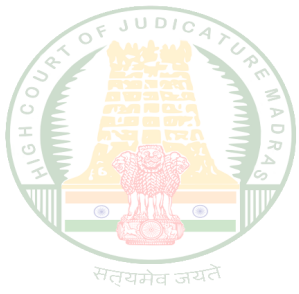
iii) Thirdly, the learned counsel contended that by way of impugned show cause notice dated 21.04.2023, the petitioner has been called upon to submit their reply within 14 days i.e. 05.05.2023, however, the petitioner vide



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its letter dated 05.05.2023, sought time to file reply and filed the same on 30.05.2023, pursuant to which, the second respondent issued a notice on **16.06.2023 (II hearing)** calling for petitioner's reply to be filed within 19.06.203 and fixing the date of hearing on 20.06.2023. The learned counsel pausing for a moment here pointed out that in the said notice dated 16.06.2023, the second respondent has not sought for any documents from the petitioner. Since in the said personal hearing notice dated 16.06.2023, it was mentioned that no reply was filed by the petitioner, the petitioner assumed that the reply filed by the petitioner was not considered by the second respondent and therefore, the petitioner reiterated the said reply on 16.06.2023. Again the second respondent issued a personal hearing notice on 21.06.2023 (III hearing) at 9.52 p.m. and fixed the personal hearing on 23.06.2023 at 11.00 a.m. and the learned counsel pointed that it is for the first time, the second respondent in the said notice dated 21.06.2023 sought for the following documents;-

- i) All invoices denoted in GSTR 1,
- ii) Credit Notes
- iii) ISD Input invoices as mentioned in the reply in the references;
- iv) List of eligible ITC
- v) List of Ineligible ITC



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and

WEB COPY vi) Inward invoices as per GSTR 2A.

4.1 Thus, by summing up the above submissions the learned counsel proceeded to attack the impugned orders by stating that none of the Hearing notices were served upon the petitioner directly but were only uploaded through the online Portal, (which is inclusive of the third Hearing Notice dated 21.06.2023) and insofar as the third Hearing Notice is concerned, it is dated 21.06.2023 (Wednesday) but, unfortunately, the petitioner could not notice the same within time and hence, the petitioner appeared before the second respondent on next working day, i.e on 26.06.2023 (Monday) and requested time for production of documents. However, the second respondent rejected petitioner's request and confirmed the proposals contained in the impugned show cause notice dated 21.04.2023.

4.2 The learned counsel contended that that day when the third hearing notice of hearing was uploaded was 'Wednesday', i.e. on 21.06.2023, that too at 9.52 p.m. and by means of the said notice, the petitioner was called upon to appear before the respondent-Department on 23.06.2023 along with all



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supportive documents viz., i) All invoices denoted in GSTR 1, ii) Credit Notes; iii) ISD Input invoices as mentioned in the reply in the references; iv) List of eligible ITC; v) List of Ineligible ITC; and vi) Inward invoices as per GSTR 2A and since the time provided for filing reply along with supportive documents is very limited, i.e. within 36 hours.

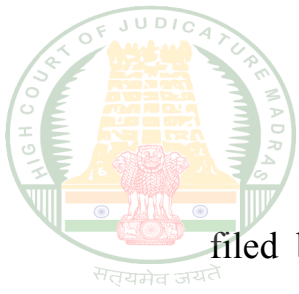
4.3 The learned counsel submitted even when the First Hearing notice, viz., the impugned show cause notice dated 21.04.2023 was issued, the petitioner was called upon to submit their reply within 14 days i.e. 05.05.2023, however, the petitioner requested for time and filed the reply on 30.05.2023 and insofar as second hearing notice dated 16.06.2023 is concerned, the petitioner was granted only three days to submit their reply on 19.06.2023 and to appear on 20.06.2023. Since the second hearing notice dated 16.06.2023, did not capture the fact that the petitioner has filed reply to the show cause notice, dated 21.04.2023, the petitioner again reiterated their submissions on 16.06.2023 and during the third notice of hearing dated 21.06.2023, viz., the impugned show cause notice, the petitioner was directed to appear on 23.06.2023 at 11.00 a.m. and it is for the first time, the second respondent listed the documents to be produced by the petitioner. Therefore, the learned



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counsel contended that impugned orders are not sustainable not only on the ground of violation of principles of natural justice but also on other grounds since the respondent-Department has not granted fair opportunity of representation to the petitioner and hence, liable to be set aside.

5. When the Writ Petition came up for hearing on 19.10.2023, at 2.15 p.m. since the learned counsel appearing for the petitioner demonstrated before this Court as to how the impugned orders are not sustainable and the demand raised via such orders is palpably erroneous, this Court directed Mr.V.Prashanth Kiran, learned Government Advocate for the Revenue to get instructions as regards the contentions advanced by the learned counsel for the petitioner. Today, when the case is heard, the learned Government Advocate sought for further time to get instructions in the matter, and raised strong objection for grant of any interim order in favour of the petitioner by submitting that the petitioner has been afforded with opportunities thrice, despite grating such opportunities, the petitioner was unable to produce documents. Further, the learned counsel submitted that the documents sought by the second respondent in the third hearing notice dated 21.06.2023 are none other than the documents referred to by the petitioner themselves in the reply



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filed by them, and there would not be any impediment on the part of the petitioner to produce the same, and since the petitioner failed to produce the documents, the second respondent, having given three opportunities to the petitioner, proceeded to confirm the proposals contained in the show cause notice dated 21.04.2023 and has rightly passed the assessment order dated 29.06.2023. Therefore, the learned Government Advocate submitted that the orders passed by the respondent-Department are wholly tenable.

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

7. It is no doubt true that the respondent-Department has provided three opportunities to the petitioner, but, as rightly pointed out by the learned counsel for the petitioner, all those three opportunities, at no stretch of imagination can be deemed to be fair opportunities granted to the petitioner, inasmuch as, in all the said three notices dated 21.04.2023, ii) 16.06.2023, and iii) 21.06.2023, the second respondent has not afforded sufficient time enabling the petitioner to file effective reply to defend themselves. Further, on perusal of the notice dated 21.06.2023, which culminated in passing the



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assessment order dated 29.06.2023 whereby the proposals contained in the show cause notice dated 21.04.2023 was confirmed, it could be clearly seen that the respondent-Department have uploaded the notice through e-Portal on 21.06.2023 that too at 9.52 p.m. and fixed the date for personal hearing within 36 hours i.e. on 23.06.2023 and by means of the said order, for the first time, the petitioner was called upon to produce supportive documents in their defence.

7.1 Admittedly, the notice dated 21.06.2023 was not served on the petitioner by way of any physical mode and was only uploaded through online Portal on 21.06.2023, which falls on Wednesday, followed two working days, and unfortunately, the petitioner could not have access through the website on those days and happened to notice the same belatedly and the moment, the petitioner noticed the said notice dated 21.06.2023, they appeared before the respondent-Department on very next working day, i.e. Monday and requested time for production of documents.

7.2 Thus, it is clear that by means of the last so-called III Opportunity of hearing, the petitioner was granted only a short span of time, i.e. less than



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2 days, and which is less than 36 hours, and at any costs, it does not merit on the aspect of providing due opportunity. As per the provisions of the Act, sufficient time ought to have been granted for filing their reply, unless and until, sufficient time is granted to the petitioner, they will not be in position to file their reply in an effective manner.

8. Thus, as already stated supra, the notice calling forth petitioner's reply to be filed within limited time cannot be deemed to a notice affording fair opportunity of hearing to the petitioner. Had it been the real intention of the respondent-Department to provide fair opportunity of hearing to the petitioner, obviously, the respondent-Department would have given reasonable time for the petitioner to file their reply along with supportive documents. But on a perusal of all three notices dated i) 21.04.2023 (I opportunity of hearing) ii) 16.06.2023 (II opportunity of hearing) and iii) 21.06.2023 (III opportunity of hearing) it could be clearly seen that the respondent-Department has granted only a limited time of i) 14 days, ii) 4days and iii) three days respectively. Therefore, the so-called three opportunities of hearing given nominally to the petitioner but in reality, the second respondent has not provided any fair opportunity of hearing to the petitioner to put forth their defence. This Court



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would further like to point out herein that under the guise of providing opportunity, the assessee should not be called for to file reply within a short span of time, within 2 days insofar as present case is concerned. If done so, the object behind which the provisions of the Act was enacted on the aspect of "provision of fair opportunity to the assessee" will not be achieved and the same would lead to depriving away the legal rights of the assessee to defend themselves.

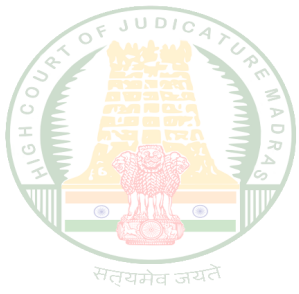
9. That apart, on perusal of the impugned order dated 29.06.2023, it is seen that the respondent-Department has made a vague statement that **“taxpayer's (petitioner) mere written reply with tabular columns for discrepancies 1, 2, 3 and 4 could not be accepted”**. In what way, the reply/objections made by the petitioner is not acceptable, in what manner, does the second respondent is not disagreeable to the points raised by the petitioner, and how come the explanations/objections offered by the petitioner is not satisfactory has not been set out clearly by the second respondent and rather, the second respondent has passed the impugned order, which is verbatim reproduction of the reply filed by the petitioner, which is in the form of Tabulated Columns, and in para No.15, under the heading 'Findings, the



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second respondent has stated that petitioner's reply without any supportive documents could not be synchronized with this Department SAS alerts in GST Portal and therefore, the proposals contained in the show cause notice dated 21.04.2023 is hereby confirmed.

10. In the light of the above narrated facts, this Court is of the view that the impugned orders are wholly untenable not only on the ground of total violation of principles of natural justice but also on other grounds, including failure to pass a speaking order as rightly contended by the learned counsel for the petitioner. Though the learned Government Advocate has raised strong objection for granting any order, be it interim or final order, which would succour the petitioner, however, considering the fact that he has not taken a definite stand as regards the contention advanced by the petitioner, which would per se show that he is partially admitting that there are certain discrepancies in the impugned order, and bearing in mind that the interests of both the assessee and the Revenue has to be safeguarded, in the light of higher demand made by the second respondent so as to avoid unnecessary delay to process the further adjudication, this Court is inclined to set aside the impugned order of assessment with condition to remand the matter back to the second respondent for re-adjudication.



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11. Accordingly, the Writ Petition is allowed, impugned order, viz.,

the assessment order dated 29.06.2023 is set aside and the matter is remanded to the second respondent for fresh consideration. The second respondent is directed to provide one more opportunity of personal hearing to the petitioner, which shall be fixed on 16.11.2023, on which date, the petitioner shall file their reply together with all documents in support of their claim, which shall be inclusive of the documents as sought for by the respondent-Department in the notice of hearing dated 21.06.2023, and thereafter, the second respondent shall peruse the documents and after conducting a full-fledged hearing, the second respondent is directed to pass fresh assessment orders, which shall be a speaking order touching upon all issues raised by the petitioner on or before 12.12.2023. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

List the matter on 14.12.2023 for reporting compliance.

20.10.2023

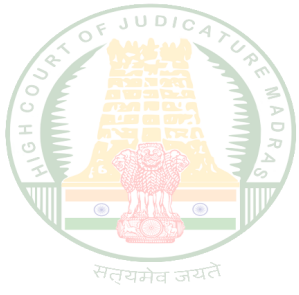
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Index :yes/no

Neutral Citation : yes/no

Note : Issue order copy on 31 .10.2023.

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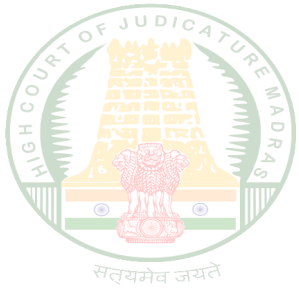


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