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M/S Rise Constructions vs Additional Commissioner of

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Court : Karnataka

Decided On : Aug-13-2024

Judge : S.R.Krishna Kumar

Appeal No. : WP/2665/2024

Appellant : M/S Rise Constructions

Respondent : Additional Commissioner of

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2024 BEFORE THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR WRIT PETITION NO. 2665 OF 2024 (T-RES) BETWEEN: M/S. RISE CONSTRUCTIONS, A PARTNERSHIP FIRM REPRESENTED HEREIN BY ITS PARTNER, MR. SINGAMSETTY RAM MOHAN, SON OF NARASIMHAM, AGED 53 YEARS, HAVING ADDRESS AT NO.1/1/295, VENKATACHALAM STREET, NAZEERTHOTA NAWABPET, NELLORE, ANDHRA PRADESH - 524 002. FORMERLY AT NO.114/2, NAGESHWARA RAO BUILDING, NAIDU FARM, OPP. TO BIOCON, ELECTRONIC CITY

POST, Digitally

signed by BANGALORE - 560 100.Vandana S (A FIRM -UNREGIS

HIGH COURT OF PETITIONER KARNATAKA (BY SRI. SANDEEP HUILGOL., ADVOCATE) AND:

1. ADDITIONAL COMMISSIONER OF CENTRAL TAX, BENGALURU SOUTH GST COMMISSIONERATE, C.R. BUILDING, P.B. NO.5400, -2- QUEENS ROAD, BENGALURU - 560 001.

2. ASSISTANT COMMISSIONER OF CENTRAL TAX, DIVISION-SD-8, BENGALURU SOUTH GST COMMISSIONERATE, C R BUILDING, P B NO.5400, QUEEN'S ROAD, BENGALURU - 560 001.

3. SUPERINTENDENT OF CENTRAL TAX, RANGE D, SOUTH DIVISION - 8, BENGALURU SOUTH COMMISSIONERATE, KENDRIYA SADAN, 7TH FLOOR, A WING, KORAMANGALA 3RD BLOCK, BANGALORE - 560 003.

4. JOINT COMMISSIONER OF CENTRAL TAX, CENTRAL EXCISE AND SERVICE TAX, GST COMMISSIONERATE, BENGALURU SOUTH, C.R. BUILDING, P.B. NO.5400, QUEEN'S ROAD, BENGALURU - 560 001.

5. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, REPRESENTED BY HEREIN BY ITS CHAIRMAN, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI - 110 001.

6. THE UNION OF INDIA,

REPRESENTED HEREIN BY THE SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NORTH BLOCK, -3- GOVERNMENT OF INDIA, NEW DELHI - 110 001. RESPONDENTS (BY SRI.AKASH B SHETTY, ADVOCATE FOR R1 TO R5; SRI.KUMAR M.N., ADVOCATE FOR R6) THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO i)

QUASH THE IMPUGNED ORDER-IN-ORIGINAL BEARING FILE NO.

GEXCOM/ADJN/ST/JC/1467/2021, OIO NO. BLRSOUTH/ADC/31/2023-24 AND DIN NO. 20230757YV090000F199 WHICH WAS PASSED ON 30/06/2023 AND ISSUED ON 05/07/2023 BY THE R1 UNDER CHAPTER V OF THE FINANCE ACT, 1994 (ANNEXURE-A) AND ETC., THIS PETITION, COMING ON FOR ORDERS, THIS DAY,

ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, the petitioner seeks the following reliefs; "(i) Quashing the impugned Order-in-Original bearing File No.GEXCOM/ADJN/ST/JC/1467/2021, OIO No.BLR-SOUTH/ADC/31/2023-24 and DIN No.20230757YV090000F199 which was passed on 30.06.2023 and issued on 05.07.2023 by the 1st Respondent under Chapter V of the Finance Act, 1994 (Annexure-A); -4-

(ii) Pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interest of justice and equity."

2. A perusal of the material on record will indicate that

the respondents initiated aforesaid proceedings for the year 2016-17 by issuance of the Show Cause Notice dated 21.10.2021, which was followed by Notices for personal hearing issued by the respondents to the petitioner. However, since the petitioner did not reply to the aforesaid Show Cause Notices, nor participated in the proceedings, the respondents proceeded to pass the impugned ex-parte order, which is assailed in the present petition.

3. Heard learned counsel for the petitioner and learned counsel for the respondents.

4. Learned counsel for the petitioner submits that the

aforesaid Show Cause Notice and the Notices for personal hearing issued by the respondents were not received by the petitioner and he was not aware of the same and consequently, his inability and omission to issue reply/response to the Show Cause Notice and to contest the proceedings was due to -5- bona-fide reasons, unavoidable circumstances and sufficient cause. It is submitted that if the impugned order is set aside and one more opportunity is provided to the petitioner, he would submit his reply to the Show Cause Notice and contest the proceedings by producing relevant documents, pleadings, etc., and the respondents may be directed to proceed further in the matter.

5. Per contra, learned counsel for the respondent submits that there is no merit in the petition and the same is liable to be dismissed.

6. A perusal of the impugned order will indicate that at

paragraph No.16 the respondents have come to the conclusion

that the petitioner has not submitted his response/reply to the Show Cause Notice, nor appeared when notices for personal hearing were issued by the respondents to the petitioner, which culminated in the impugned ex-parte order being passed by the respondents.

7. Under these circumstances, in view of the specific

assertion on the part of the petitioner that his inability and omission to submit reply/response to the Show Cause Notice -6- and contest the proceedings was due to bona-fide reasons, unavoidable circumstances and sufficient cause, in order to provide one more opportunity to the petitioner, I deem it just and appropriate to set aside the impugned order and remit the matter back to respondent No.3 for reconsideration afresh from the stage of submitting reply to the Show Cause Notice and to proceed further in accordance with law.

8. In the result, petition is hereby allowed. The

impugned order is hereby set aside. Mater is remitted back to respondent No.3 for reconsideration afresh in accordance with law from the stage of petitioner

submitting reply to the Show Cause Notice dated 21.10.2021.

9. Liberty is reserved in favour of the petitioner to

submit his response/reply along with documents, which shall be considered by respondent No.3, who shall provide an opportunity of personal hearing to the petitioner and proceed further in accordance with law.

10. All rival contentions of the parties on all the aspects of the matter including jurisdiction, limitation, etc., are kept open and no opinion is expressed on the same. -7-

11. Respondents are directed to furnish a copy of the

Show Cause Notice to the petitioner at the address shown in the cause title within a period of two weeks from today. Sd/- (S.R.KRISHNA KUMAR) JUDGE PN CT: SN List No.: 1 Sl No.: 9

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