IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.07.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.22366 of 2019
& W.M.P.No.21682 of 2019

M/s.Thirumala Structurals
Represented by its Proprietrix
Mrs.K.Bhuvaneswari. .. Petitioner

Vs.

1.Assistant Commissioner of State Tax
Tiruverkadu Assessment Circle
No.2, Alagiri Street
Thenpalani Nagar, Kolathur
Chennai - 600 099.

2.Commissioner of State Tax
Ezhilagam, Chepauk
Chennai - 600 005. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned notice in GSTIN 33AAPPK2421C1Z8/2017-18 dated 25.02.2019 and quash the same, consequently, direct the 1st respondent to permit the petitioner to adjust the credit under State Tax pertaining to WCT TDS to the tune of Rs.4,43,746/- and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.K.Thyagarajan

For Respondents : Ms.G.Dhanamadhri,
Government Advocate

O R D E R

Mr.K.Thyagarajan, learned counsel on record for writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate, accepts notice on behalf of both the respondents.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Main writ petition is directed against a 'notice dated 25.02.2019, bearing Reference No.GSTIN 33AAPPK2421C1Z8/2017-18' (hereinafter 'impugned notice' for the sake of brevity, convenience and clarity).

4. Subject matter of instant writ petition arises under 'Tamil Nadu Goods and Services Tax Act, 2017' (hereinafter 'TNGST Act' for brevity). Writ petitioner was admittedly registered as a dealer under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity.

5. Vide the impugned notice issued by the first respondent, writ petitioner was put on notice that the returns reported by the writ petitioner with regard to tax credit, that was carried forward, there was an erroneous claim. Saying so, vide the impugned notice, writ petitioner was called upon to remit, what according to the respondent is wrongly claimed credit. More importantly, it is also mentioned in the impugned notice that it is proposed to levy penalty under the relevant provisions of the statute.

6. Saying so, the impugned notice has granted an opportunity of being heard in person to the writ petitioner. This is articulated in the concluding paragraph in the impugned notice, which reads as follows:

> 'However, the taxable person is granted an opportunity of being heard in person before the undersigned on any working day within the office hours, within the above notice time along with documentary evidence if any in support of their claim, failing which action would be pursued under the provisions of the Act and Rules made thereunder.'

7. Learned counsel for writ petitioner submits, on instructions, that writ petitioner company has availed of the opportunity of being heard and has gone before the first respondent and has articulated its stand.

8. Learned Revenue counsel submits that in the light of the submissions made by learned counsel for writ petitioner, writ petitioner cannot make out any ground or grievance qua the impugned notice and all that remains is for orders to be passed after considering the objections raised by the writ petitioner in the personal hearing. This obviously will be done by the

first respondent.

9. Be that as it may, this Court is not inclined to interfere in the impugned notice for three reasons. One is it is in the nature of 'show cause notice' ('SCN' for brevity). There are no exceptional circumstances for interference at the SCN stage (in this regard Kunisetty Satyanarayana case reported in (2006) 12 SCC 28 [Union of India and another Vs. Kunisetty Satyanarayana] is of relevance). The second reason is that writ petitioner in any case availed of the hearing in person, orders are awaited and the third reason is that there is latches on the part of the writ petitioner as the impugned notice is dated 25.02.2019, but the instant writ petition has been filed in this Court only on 29.07.2019, more than five months later that too after availing opportunity of being heard in person.

10. Before concluding, this Court deems it appropriate to extract relevant paragraphs in Kunisetty Satyanarayana case reported in (2006) 12 SCC 28 and the same is paragraphs 15 and 16, which read as follows:

> '15.Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.
>
> 16. No Doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.'

11. All that have been set out supra, this Court is of the considered view that challenge to the impugned notice is bereft of merits. Therefore, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vsm

To

1.Assistant Commissioner of State Tax
Tiruverkadu Assessment Circle
No.2, Alagiri Street
Thenpalani Nagar, Kolathur
Chennai - 600 099.

2.Commissioner of State Tax
Ezhilagam, Chepauk
Chennai - 600 005.

+1cc to the Spl Government Pleader, S.R.No.65545

JP(CO)
CB(17/09/2019)

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