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W.P.Nos.2850 and 2852 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.2850 and 2852 of 2023
and
W.M.P. Nos.2968 and 2973 of 2023

Tvl. ITNL-KMB (J.V.),
Represented by Vice President .. Petitioner in both W.P.s
VS

The Deputy Commissioner of (ST),
Inspection, Intelligence – I,
1st Floor, C.T. Admin Building,
No.1, Greaves Road,
Chennai – 6600 006. ... Respondent in both W.P.s

Prayer in W.P. No.2850 of 2023 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the respondent in the impugned order GSTIN/33AABAI1294C1Z6/2017-18, dated 30.05.2022 and quash the same.

Prayer in W.P. No.2852 of 2023 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the respondent in the impugned notice GSTIN/33AABAI1294C1Z6/2017-18, dated 30.11.2022 and quash the same.



W.P.Nos.2850 and 2852 of 2023

For Petitioner in both W.P.s : Ms.Radhika Chandrasekhar

For Respondent in both W.P.s: Mr.C. Harsha Raj,
Additional Government Pleader

COMMON ORDER

By consent of both the parties, these writ petitions are taken up for final disposal in the admission stage itself.

2. Mr.C. Harsha Raj, learned Additional Government Pleader accepts notice for the respondent.

3. In W.P. No.2850 of 2023, the petitioner has challenged the impugned Assessment Order dated 30.05.2022 and in W.P. No.2853 of 2023 he has challenged the consequential recovery notice dated 30.11.2022 issued by the respondent on the following grounds :-

a) By total non application of mind to the fact that the NCLAT by its order dated 15.10.2018 has passed a moratorium order, which is akin to a moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code 2016, the impugned Assessment Order has been passed erroneously. The petitioner has also in its replies, dated 21.02.2022 and 15.03.2022 has categorically referred to a moratorium order passed by the NCLAT referred to supra. But however, according to them, the same has



W.P.Nos.2850 and 2852 of 2023

not been considered in the impugned Assessment Order.

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b) No personal hearing was granted to the petitioner, despite a specific request having been made in the aforementioned replies by the petitioner, which is in violation of Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017.

c) In violation of the principles of natural justice, the impugned Assessment Order has been passed.

4. The learned counsel for the petitioner drew the attention of this Court to the operative portion of the order, dated 15.10.2018 passed by the NCLAT, referred to supra, which reads as follows :-

6..... Taking into consideration, the nature of the case, larger public interest and economy of the nation and interest of the Company and 348 group companies, there shall be stay of

i) The institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against 'IL&FS' and its 348 group companies in any Court of Law/Tribunal /Arbitration Panel or Arbitration Authority; and

ii) Any action by any party or person or Bank or Company, etc. to foreclose, recover or enforce any security interest created over the assets of 'IL&FS' and its 348 group companies including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

iii).....

iv)....



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W.P.Nos.2850 and 2852 of 2023

v) Any and all banks, financial institutions from exercising the right to set off or lien against any amounts lying with any creditor against any dues whether principal or interest or otherwise against the balance lying in any bank accounts and deposits, whether current or savings or otherwise of the 'IL & FS' and its 348 group companies.

5. In particular, she referred to Clause V referred to supra and would submit that the Assessment Proceedings ought not to have been proceeded with by the respondent in view of the order of the NCLAT.

6. The learned counsel for the petitioner also drew the attention of this Court to paragraph No.3 of the aforementioned order of the NCLAT, dated 15.10.2018 and in particular, she referred to paragraph No.3(ii) and would submit that the order passed by NCLAT is similar to a moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code, 2016.

7. Paragraph No.3 of the order of the NCLAT reads as follows :-

3. The questions arise for consideration in these appeals are

:-

(i) Whether the Tribunal can pass appropriate order under Section 241 read with Section 242 of the Companies Act, 2013 for resolution of the problems faced by the Company in a time-bound manner for maximisation of value of assets of the Company, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders, and in case of failure of resolution pass appropriate order of liquidation; and



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W.P.Nos.2850 and 2852 of 2023

(ii) Whether the Tribunal in exercise of powers conferred under Section 242(1)(b) read with Section 242(2)(m) and Section 242(4) of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016 can pass appropriate interim order similar to order under Section 14 of the Insolvency and Bankruptcy Code, 2016

8. The learned counsel for the petitioner also drew the attention of the replies submitted by the petitioner to the respondent, which are dated 21.02.2022 and 15.03.2022 and would submit that despite a specific stand having been taken by the petitioner that in view of the moratorium order passed by the NCLAT, Assessment Proceedings cannot be proceeded with, the impugned Assessment Order has been passed ignoring the same.

9. While drawing the attention to the replies referred to supra, the learned counsel for the petitioner would also submit that a specific request was made by the petitioner for personal hearing which was also not granted as seen from the impugned Assessment Order.

10. She also drew the attention of this Court to Section 75(4) of the TNGST Act, 2017 and would submit that as per the said provisions, necessarily, the respondent ought to have granted personal hearing to the petitioner.



WEB COPY



W.P.Nos.2850 and 2852 of 2023

11. Section 75(4) of the TNGST Act, 2017 reads as follows :-

75(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

12. The learned counsel for the petitioner also drew the attention of this Court to a Division Bench judgment of the Calcutta High Court in the case of *Srei Equipment Finance Ltd., v Additional / Joint/Deputy/Assistant Commissioner of Income-tax reported in 2022 141 taxmann.com 307 (Calcutta)*

13. Relying upon the aforesaid decision, the learned counsel for the petitioner would submit that Assessment Proceedings ought not to have been proceeded with by the respondent in view of the order passed by the NCLAT, dated 15.10.2018, which has passed a moratorium order.

14. She would also submit that even if the matter is remanded back to the respondent for fresh consideration, the Assessment Proceedings will have to be kept in abeyance in view of the moratorium order granted by the NCLAT as seen from the decision of the Division Bench of the Calcutta High Court, referred to supra.

15. Per contra, the learned Additional Government Pleader



W.P.Nos.2850 and 2852 of 2023

appearing for the respondent would submit that the petitioner is having an alternative efficacious statutory appellate remedy, if aggrieved by the impugned Assessment Order and therefore, the writ petition is not maintainable. He would also submit that the order passed by the NCLAT, which the petitioner relies upon is not akin to a moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code, 2016, since no proceedings are pending under the Insolvency and Bankruptcy Code, 2016. The order of the NCLAT was not passed under the provisions of the Insolvency and Bankruptcy Code, 2016, but was passed based on an application filed by the Union of India under Section 241 read with Section 242 of the Companies Act, 2013. Therefore, the order passed by the NCLAT cannot be equated with a moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code, 2016.

16. According to the learned Additional Government Pleader appearing for the respondents, the moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 stands on a different footing altogether. He would also submit that even though the petitioner relies upon a Division Bench judgment of the Calcutta High Court for the purpose of her submission that the Assessment Proceedings will have to be



W.P.Nos.2850 and 2852 of 2023

kept in abeyance, such a stand was never taken by the petitioner in the replies submitted by them as they never questioned the jurisdiction of the Assessing Officer to proceed with the assessment.

17. He would also submit that the Calcutta High Court decision relied upon by the learned counsel for the petitioner has no bearing to the facts of the instant case, in view of the fact that there was no Corporate Insolvency Resolution Process (CIRP) pending against the petitioner, whereas in the said decision, CIRP proceedings were pending.

18. Admittedly, the contentions of the petitioner, which has been recorded by this Court in the earlier paragraphs were not considered by the respondent in the impugned Assessment Order. It is also not in dispute that the NCLAT had passed an order on 15.10.2018, which the petitioner claims is akin to a moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code, 2016. It is for the respondent to consider the petitioner's contention and decide the issue on merits.

19. This Court is not expressing any view on the merits of the matter.

20. Admittedly, no personal hearing was afforded to the petitioner in the impugned assessment proceedings despite a request having been made



W.P.Nos.2850 and 2852 of 2023

by the petitioner for the same in their replies.

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21. Section 75(4) of the TNGST Act, 2017 as extracted supra also makes it clear that an opportunity of hearing will have to be granted to the assessee once a request has been made. Having not granted personal hearing to the petitioner in the impugned Assessment proceedings, despite a request having been made by the petitioner in their replies, this Court is of the considered view that principles of natural justice has been violated. The respondent has also not considered the petitioner's contention that Assessment Proceedings cannot be proceeded with in view of the fact that the NCLAT has passed an order on 15.10.2018, which according to the petitioner is akin to a moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code, 2016.

22. Since the aforementioned contentions have not been considered by the respondent in the impugned Assessment Order, this Court is of the considered view that on account of the violation of principles of natural justice due to the fact that no personal hearing was afforded to the petitioner and on account of the fact that the contentions of the petitioner as raised in this writ petition have not been considered by the respondent, despite the same having been raised in their replies sent to the



W.P.Nos.2850 and 2852 of 2023

respondent, the impugned order has to be necessarily quashed and the matter has to be remanded back to the respondent for fresh consideration on merits and accordance with law.

23. Insofar as the request for keeping the Assessment proceedings in abeyance is concerned, this Court is rejecting the said request as it is for the respondent to decide based upon the petitioner's contention as to whether the assessment proceedings can be kept in abeyance or not. The respondent is directed to pass final orders, after adhering to the principles of natural justice and after affording a personal hearing to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

24. In view of the quashing of the impugned Assessment Order, the consequential recovery notice, which is the subject matter of challenge in W.P. No.2852 of 2023 is also quashed.

25. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

03.02.2023



W.P.Nos.2850 and 2852 of 2023

Index:Yes/No

Neutral Citation:Yes/No

vsi2

ABDUL QUDDHOSE, J.

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To
The Deputy Commissioner of (ST),
Inspection, Intelligence – I,
1st Floor, C.T. Admin Building,
No.1, Greams Road,
Chennai – 6600 006.

W.P. Nos.2850 and 2852 of 2023

03.02.2023



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W.P.Nos.2850 and 2852 of 2023