IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.3921 of 2023
and
W.M.P. No.3987 of 2023

A. Palanisamy ... Petitioner

vs

The Deputy State Tax Officer (Circle),
Harur Assessment Circle,
Harur. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the files of the respondent in GSTIN/ID : 33AKOPP2755K1ZP/2019-20, dated 30.12.2021 and quash the same as being without jurisdiction.

For Petitioner	:	Mr.R. Senniappan
For Respondent	:	Mr.M.Venkateswaran Spl. Govt. Pleader

ORDER

By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr.M.Venkateswaran, learned Special Government Pleader accepts notice for the 2nd respondent.

3. The petitioner has challenged the impugned Assessment Order dated 30.12.2021 passed by the respondent under the Tamil Nadu Goods and Services Tax Act, 2017. Under the impugned Assessment Order, the petitioner has been called upon to pay Rs.5,59,026/- towards the balance tax liability and another sum of Rs.39,787/- towards penalty under Section 73(1) of the G.S.T. Act, 2017.

4. The petitioner has challenged the impugned Assessment Order on the ground that by total non application of mind to the Notification No.41/2017 - Integrated Tax (Rate), dated 23.10.2017 issued by the Ministry of Finance, Department of Revenue, Government of India, the impugned Assessment Order has been passed. According to the petitioner, in respect of the exports made by the petitioner, the respondent ought to have levied G.S.T. only at the rate of 0.1%, whereas, under the impugned Assessment Order, the respondent has levied at 18%.

5. The learned counsel for the petitioner drew the attention of this Court to the summary of the order dated 30.12.2021 issued under Form GST DRC-07 to the petitioner. The description of the goods / services

mentioned in the summary of the order dated 30.12.2021, referred to supra is extracted hereunder :-

Sr. No.	***HSN***	***Description***
1.	25161100	GRANITE, PORPHYRY, BASALT, SANDSTONE AND OTHER MONUMENTAL OR BUILDING STONE, WHETHER OR NOT ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR (INCLUDING SQUARE) SHAPE - GRANITE : CRUDE OR ROUGHLY TRIMMED

6. According to the petitioner, they are dealing with the aforementioned goods and therefore as per the Notification, dated 23.10.2017 issued by the Ministry of Finance, Department of Revenue, Government of India in Notification No.41/2017 – Integrated Tax (Rate), the petitioner is liable to pay G.S.T. only at the rate of 0.1% in respect of the exports made by them and not 18% as per the impugned Assessment Order.

7. According to the learned counsel for the petitioner, the aforementioned Notification has not been considered in the impugned Assessment Order and by total non application of mind to the same, the

rate of G.S.T. payable by the petitioner has been fixed at 18%. He would further submit that even if the Notification is not applicable to the petitioner, the rate of G.S.T payable by the petitioner can be fixed only at 5%.

8. Heard Mr.Senniappan, learned counsel for the petitioner and Mr.M.Venkateswaran, learned Special Government Pleader accepts notice for the respondent.

9. The contentions of the petitioner as raised in this writ petition have not been considered in the impugned Assessment Order. However, the impugned Assessment Order is dated 30.12.2021. The petitioner has also not filed any statutory appeal as against the said order. He has chosen to file this writ petition only now i.e., after a lapse of more than thirteen months. Therefore, even if principles of natural justice have been violated by the respondent and the impugned Assessment Order is a non speaking order with regard to the petitioner's contention, the petitioner must be put on terms for quashing the impugned Assessment Order on account of the inordinate delay in approaching this Court.

10. This Court is of the considered view that 50% of the amount demanded under the impugned Assessment Order which includes penalty has to be deposited by the petitioner, within a period of four weeks from the date of receipt of a copy of this order and on deposit of the said amount, within the stipulated time, the impugned Assessment Order can be quashed and remanded back to the respondent for fresh consideration on merits and in accordance with law, within a time frame to be fixed by this Court.

11. For the foregoing reasons, the petitioner is directed to deposit 50% of the amount demanded under the impugned Assessment Order, dated 30.12.2021 with the respondent, within a period of four weeks from the date of receipt of a copy of this order. On deposit of the aforesaid amount by the petitioner, within the stipulated time, the impugned Assessment Order, dated 30.12.2021 stands quashed and is remanded back to the respondent for fresh consideration on merits and in accordance with law. The respondent is directed to pass final orders on merits and in accordance with law by adhering to the principles of natural justice and by granting one personal hearing to the petitioner as expeditiously as possible. It is made clear that in case, the petitioner fails

to pay the aforesaid amount, within the aforesaid time, the impugned order passed by the respondent shall stand confirmed.

12. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2023

(1/2)

Index:Yes/No
Neutral Citation:Yes/No
vsi2

To
The Deputy State Tax Officer (Circle),
Harur Assessment Circle,
Harur.

ABDUL QUDDHOSE, J.

vsi2

W.P. No.3921 of 2023

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