IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22404 of 2023
and
W.M.P.No.21797 of 2023

M/s.Dream Homes
Represented by its Partner ... Petitioner

Vs.

The Commissioner of GST,
Chennai Outer Commissionerate,
Anna Nagar, Chennai - 600 040. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 23.03.2023 passed by the respondent in Order-in-Original No.18/2023(c) and quash the same and consequently direct the respondent to reconsider the case afresh.

For Petitioner : Mr.M.Deivanandam

For Respondent : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

Mr.B.Ramana Kumar, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. The petitioner is before this Court against the impugned Order-in-Original No.18/2023(C) dated 23.03.2023 passed by the respondent.

3. By the impugned order, the respondent has confirmed a total tax liability of Rs.2,78,45,879/- as detailed below:-

Sl.No.	***Issue Involved***	***Service Tax proposed to demand in Show Cause Notice Rs.***
1.	Computation of service tax payable by the Assessee based on the receipt of income as reflected in bank account statements	1,56,16,689
2.	Taxability and valuation of services provided on joint development basis on which flats provided to land owner. (Manivannan site)	33,64,445
3.	Incorrect payment of service tax	18,27,872

Sl.No.	***Issue Involved***	***Service Tax proposed to demand in Show Cause Notice Rs.***
	on flats sold to second category service receivers in Manivannan site	
4.	Non-payment of service tax on other income shown in balance sheet	63,963
5.	Non-payment of interest for delayed payment of service tax	69,72,910
	Total amount demanded	2,78,45,879

4. Apart from the above, the petitioner has also been called upon to pay interest and penalty under Section 75 of the Finance Act, 1994.

5. Earlier, the petitioner was issued with summons. The petitioner was required to produce certain details. The chartered accountant appointed by the petitioner appears to have sent a statement of reconciliation on 30.04.2019 with ST-3 Returns filed for the Assessment Years 2014-2015 to 2016-2017. Thereafter, the petitioner was again summoned to give the details. The petitioner had furnished some of the details. However, the details were found unsatisfactory.

6. Under these circumstances, Show Cause Notice No.02/2021 dated 12.11.2021 was issued, which has now culminated in the impugned Order-in-Original No.18/2023(c) dated 23.03.2023.

7. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

8. The petitioner has filed voluminous records before this Court to substantiate that the impugned order that has been passed by the respondent is liable to be set aside.

9. There are several disputed questions of fact involved in the writ petition, which cannot be adjudicated in the writ proceedings. The petitioner has filed as many as 22 volumes of documents. These documents pertain to the accounts maintained by the petitioner *vis-a-vis* the final statements of the petitioner with the Bank. Therefore, this Writ Petition cannot be entertained.

10. Ordinarily, as against the impugned order, the petitioner should have filed a statutory appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) within a stipulated period under Section 86(1) of the Finance Act, 1994. However, the period for filing the appeal has expired by the time when the present writ petition was filed on 07.06.2023.

11. Be that as it may, the CESTAT has powers to condone the delay under Section 86(5) of the Finance Act, 1994. Therefore, this Writ Petition is dismissed by giving liberty to the petitioner to file a statutory appeal before the CESTAT within in a period of thirty days from the date of receipt of a copy of this order.

12. The petitioner shall also pre-deposit 7.5% of the disputed tax along with the appeal. If such an appeal is filed within such time together with pre-deposit of 7.5% of the disputed tax, the CESTAT shall entertain the same without insisting upon the limitation aspect and dispose the appeal on its merits in its turn.

C.SARAVANAN,J.

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13. This Writ Petition stands dismissed with the above liberty. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

31.07.2023

Index: Yes/ No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Commissioner of GST,
Chennai Outer Commissionerate,
Anna Nagar, Chennai - 600 040.

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