IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26782 of 2023
and
W.M.P.Nos.26214 and 26215 of 2023

Muthukumarasamy Murugadass,
Proprietor of Sri Selva Vinayaga Transports,
No.121/1, Coral Merchant Street,
Mannady, Chennai – 600 001. ... Petitioner

Vs.

The Assistant Commissioner of GST & CE,
Egmore Division, Chennai North Commissionerate,
Newry Towers, 1st Floor, No.2054-I,
II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Order-in-Original No.18/2023(AC)(S.Tax) dated 31.03.2023 with the reference GEXCOM/SCN/ST/6534/2021-CGST-DIV-EGM-COMMRTE-CHENNAI(N) in the files of the respondent, quash the same and direct the respondent to make a de novo adjudication.

For Petitioner : Mr.S.Ramamurthy

For Respondent : Mr.K.Mohana Murali
Senior Panel Counsel

ORDER

Mr.K.Mohana Murali, learned Senior Panel Counsel takes notice on behalf of the respondent.

2. The petitioner is aggrieved by the impugned Order-in-Original No.18/2023(AC)(S.Tax) dated 31.03.2023 passed by the respondent and the consequential Demand Notice dated 04.07.2023 issued by the Superintendent, Range-II, Egmore Division, Chennai North Commissionerate, Chennai.

3. The impugned order dated 31.03.2023 precedes a Show Cause Notice dated 09.10.2021 seeking to demand a sum of Rs.19,73,486/- towards service tax liability of the petitioner for the period between 2016 and 2017.

4. The amount has been quantified based on the amounts culled out from the petitioner's income tax returns by the service tax department.

5. The specific case of the petitioner is that the petitioner was providing services of goods transport agency and as such, the petitioner was not liable to pay tax and it is the recipient, who is liable to pay tax in terms of Notification No.30/2012-Service Tax (S.T.) dated 20.06.2012 with effect from 01.07.2012 read with Rule 2(1)(d)(5) of the Service Tax Rules, 1994.

6. The learned counsel for the petitioner submits that the petitioner was under a *bona fide* belief that the petitioner was not liable to pay tax as the services provided by the petitioner to the recipient is liable to tax on reverse charge basis and therefore, the service tax liability is to be borne by the recipient of service.

7. The learned counsel for the petitioner further submitted that the petitioner therefore did not get himself registered before the service tax department.

8. That apart, it is submitted that the petitioner had shifted the place of business long time back and therefore, the notice that was sent to the address

mentioned in the impugned order was not communicated to the petitioner. It is further submitted that the petitioner came to know about the passing of impugned order only after the Demand Notice dated 04.07.2023 was issued to the petitioner.

9. It is therefore submitted that the impugned order has been passed in gross violation of principles of natural justice as no notice has been served on the petitioner.

10. The learned Senior Panel Counsel for the respondent on the other hand would submit that the petitioner has not registered himself with the service tax department. It is further submitted that even if the petitioner was not liable to pay tax that has been stated by the petitioner, the petitioner was required to register himself before the service tax department and ought to have filed nil returns, if no tax was payable in terms of Notification No.30/2012-Service Tax (S.T.) dated 20.06.2012 with effect from 01.07.2012.

11. That apart, it is submitted that the Show Cause Notice dated 09.10.2021 was sent to the last mentioned address of the petitioner and thereafter, new notices were also sent to the same address on 09.11.2022 and on 13.01.2023 and only thereafter the Order-in-Original No.18/2023(AC)(S.Tax) dated 31.03.2023 was passed.

12. The learned Senior Panel Counsel for the respondent therefore submitted that at best the petitioner can be relegated the work out his remedy before the Appellate Commissioner under the provisions of the Finance Act, 1994.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondent.

14. The petitioner may have a case to establish before the respondent that the petitioner was not liable to pay tax, and that, the recipient of service alone was liable to pay tax on reverse charge basis as is specified in Notification No.30/2012-Service Tax (S.T.) dated 20.06.2012.

15. The petitioner has not received any of the notices, which preceded the impugned order and thus, the petitioner had failed to participate in the proceedings.

16. Although the respondent cannot be faulted, the fact remains that the petitioner did not get an adequate opportunity to participate in the show cause proceedings.

17. Considering the above, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

18. Needless to state, before passing such order, the petitioner shall be heard.

19. The impugned order which stands quashed shall be treated as a corrigendum to the Show Cause Notice dated 09.10.2021 issued to the

petitioner. The petitioner shall file a reply to the Show Cause Notice within a period of thirty days from the date of receipt of a copy of this order.

20. The present Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

13.09.2023

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

arb/nsl

To

The Assistant Commissioner of GST & CE,
Egmore Division, Chennai North Commissionerate,
Newry Towers, 1st Floor, No.2054-I,
II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.

C.SARAVANAN, J.

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