IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.27082 and 27084 of 2023
and
W.M.P.Nos.26527, 26528, 26529 and 26530 of 2023

M/s.Facetech Interiors,
Represented by its Proprietor
S.S.Kamalakannan,
Old No.8, New No.15,
II Avenue, Ashok Nagar,
Chennai - 600 083. ... Petitioner in both W.Ps

Vs.

The State Tax Officer,
Ashok Nagar Assessment Circle,
No.1, Greams Road, 5th Floor,
PAPJM Annexure Building,
Chennai - 600 006. ... Respondent in both W.Ps

Prayer in W.P.No.27082 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Summary of Order in FORM GST DRC 07 dated 23.12.2021 having Reference No.ZD331221004527Z issued by the respondent and quash the same.

Prayer in W.P.No.27084 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Notice for Recovery of Tax dated 20.03.2023 issued by the respondent and quash the same.

For Petitioner (In both W.Ps)	:	Mr.L.Gokulraj
For Respondent (In both W.Ps)	:	Mr.T.N.C.Kaushik Additional Government Pleader

COMMON ORDER

Mr.T.N.C.Kaushik, learned Additional Government Pleader takes notice on behalf of the respondent.

2. These writ petitions are being disposed at the time of admission after hearing the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

3. The petitioner has challenged the impugned summary of the order in Form GST DRC-07.

4. The specific case of the petitioner is that the petitioner was issued with a notice in Form GST DRC-01 on 02.12.2020, to which, the petitioner has replied on 23.12.2020.

5. It is submitted that the petitioner did not receive any information from the respondent after the petitioner filed a reply on 23.12.2020 and was shocked to receive the impugned recovery notice dated 20.03.2023 when the petitioner came to know that the impugned order has been passed. It is submitted that the impugned order has been passed without hearing the petitioner.

6. That apart, it is submitted that only the summary of the order in Form GST DRC-07 has been hosted in the web portal and the speaking order has not been issued to the petitioner. This, according to the petitioner, is violation of principles of natural justice.

7. That apart, on merits, the petitioner submits that the petitioner had a transitional credit of Rs.97,736/-, which was lying unutilized under the VAT regime immediately prior to 01.07.2017, which was transmitted by the

petitioner by filing Tran-1 by claiming the same as Input Tax Credit under the State Goods and Services Tax (SGST) Act, 2017.

8. That apart, it is submitted that the petitioner is an interior decorator and was doing as a small business and therefore, the denial of the aforesaid credit is not justified.

9. The learned Additional Government Pleader for the respondent on the other hand would submit that not only the order in Form GST DRC-07 dated 23.12.2021 was hosted in the web portal but also copy of the order was despatched on the same day. However, the petitioner has failed to file an appeal in time. It is therefore submitted that the writ petition is liable to be dismissed in the light of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440.

10. That apart, it is submitted that the petitioner has not filed a reply to the notice in Form GST DRC-01 dated 02.12.2020. Instead, the petitioner has kept a physical copy of the reply, which was apparently left at the tapal

section of the respondent Office. It is submitted that this was not the procedure to be followed and therefore, the impugned order has been passed.

11. That apart, it is submitted that the petitioner was issued with two notices dated 15.10.2020 and 02.12.2020 to which, the petitioner has not responded.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

13. Although the petitioner has not responded to the notices dated 15.10.2020 and 02.12.2020, the fact remains that the notices were issued when the entire country was under lockdown. The impugned order has been passed one year later ie., on 23.12.2021.

14. The petitioner's reply dated 23.12.2020 appears to have been acknowledged on 24.12.2020 but has not been considered by the respondent while passing the impugned order.

15. The respondent cannot be found fault for not considering the aforesaid reply as it was not connected to the file. Court is therefore inclined to exercise the discretion under Article 226 of the Constitution of India in favour of the petitioner by quashing the impugned order by remitting the case back to the respondent to pass a final order subject to the petitioner depositing 25% of the disputed tax confirmed vide impugned order dated 23.12.2021,within a period of thirty days from the date of receipt of a copy of this order.

16. Subject to such compliance, the respondent shall pass a *de novo* order on merits and in accordance with law, preferably, within a period of sixty days thereafter after duly considering the reply dated 23.12.2020.

17. The respondent may enable the web portal to enable the petitioner to upload a fresh copy of the reply dated 23.12.2020 within a period of fifteen days from the date of receipt of a copy of this order.

18. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

14.09.2023

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

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To

The State Tax Officer,
Ashok Nagar Assessment Circle,
No.1, Greams Road, 5th Floor,
PAPJM Annexure Building,
Chennai - 600 006.

C.SARAVANAN, J.

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