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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.6195 of 2024
and
W.M.P.Nos.6865 & 6963 of 2024

M/s.Ganesh Engineering,
Rep. by its Proprietor Mr.G.Rajan
Plot No.35, Womens Industrial Park,
Thirumullaivoyal, Kattur,
Thiruvallur District. ...Petitioner

-Vs-

The Assistant Commissioner (ST)
Thirumullaivoyal Assessment Circle,
Room No.115, 1st Floor,
No.32, Elephant Gate Bridge Road,
Integrated CT Building, Park Town,
Chennai – 600 003. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, to call for the records relating to the order made by the respondent dated 31.05.2023 in reference No.ZD330523149843C (GSTIN/ID:33AGSPR4087Q1ZB) together with Rectification order dated 09.06.2023, reducing the interest portion alone (GTSIN/ID:33AGSPR4087Q1ZB/2018-19) of the petitioner and quash the same.

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For Petitioner : Mr.K.Jayachandran

For Respondent : Mr.TNL.Kaushik,
Additional Government Pleader (Tax)

ORDER

This writ petition is filed for issuance of a Writ of Certiorari to quash the order of the respondent dated 31.05.2023 in reference No.ZD330523149843C (GSTIN/ID:33AGSPR4087Q1ZB) together with rectification order dated 09.06.2023, reducing the interest portion alone (GTSIN/ID:33AGSPR4087Q1ZB/2018-19) of the petitioner.

2. The case of the petitioner is that the petitioner is an assessee on the files of the respondent having valid registration under GST law. The petitioner filed the required GSTR-1 (monthly returns) and GSTR-3B returns periodically from the inception of GST law, i.e., from 2017 and there is no dispute. The petitioner collected GST when supplies were made and paid the same to the Government.

3. In this case, the dispute relates to the period 2018-19. The petitioner was shocked by the information that the respondent had attached

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the bank account of the petitioner during the first week of February 2024. For the recovery of certain amount, the petitioner immediately verified the GST portal and downloaded the various proceedings initiated by the respondent. The respondent by notice dated 03.09.2022 for intimation of discrepancies in the return after scrutiny, stated that the petitioner had generated E-way bills during the period 2018-19 for Rs.2,33,792-00 and multiple E-way bills for the same invoice number and date, same invoice value and the same consignee. Thereafter, the respondent issued a show cause notice dated 24.02.2023, proposing to demand tax, interest and penalties for the reason of such generation of E-way bills. The respondent passed an order dated 31.05.2023 confirming the proposal initiated under show cause notice dated 24.02.2023. In and by the order dated 31.05.2023, issued under Section 74, the respondent demanded total tax of Rs.42,082-00, equal amount of penalty of Rs.42,082-00 and levied interest of Rs.3,88,082-00.

4. Learned counsel for the petitioner submitted that the respondent *suo moto* took up the matter for "Rectification of Mistake" and passed the impugned order dated 09.06.2023 and uploaded in the portal. In and by the

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order dated 09.06.2023, the respondent stated that interest was calculated on the invoice value instead of tax due and ordered the interest amount to be paid at Rs.37,022-00 (total for CGST and SGST tax) only during the first week of February, 2024. The petitioner came to know all the proceedings initiated and orders passed by the respondent because for the act of misappropriation of cash, the then Accountant was terminated in 2021 itself and the activities of the petitioner came to stand still because of financial crunch and therefore, the petitioner was not in a position to know the proceedings issued and orders passed by the respondent.

5. Learned counsel for the petitioner further submitted that the person in charge of generating E-way bills is new to handling the generation of E-way bills. The said person generated two E-way bills for the same invoice applicable to the same consignee with GSTIN number. In fact, even though duplicate E-way bills were generated, only one consignment was sent to the consignee with one E-way bill. The total number of E-way bills mentioned by the respondent was 12. This means there are 6 original E-way bills and 6 E-way bills issued for the same invoice. Admittedly, only 6 consignments with 6 E-way bills were sent and invoices were sent to the

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consignee. The GST collected under the said invoices was paid to the department and mentioned in the returns filed by the petitioner during the period.

6. Learned counsel further submitted that by inadvertence the person who handled the generation of E-way bills generated 2 EWB for each invoice, which is only a technical mistake due to the challenges in the portal at the relevant time. The petitioner had not supplied materials to the consignee using both E-way bills. The petitioner is prepared to get a proper certificate from the consignees about the actual receipt of consignments with correct E-way bills and the consignee being reputed large units, M/s.Larsen & Tubro, they won't accept any consignment without proper E-way bill or with any multiple E-way bill for the same consignment. These factors will prove that the generation of E-way bills twice for the same invoice for same consignee is only a technical mistake committed by the said employee of the petitioner and does not warrant any demand for tax. Aggrieved by the order passed by the respondent, the petitioner has approached this Court by way of filing this writ petition.

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7. Learned Additional Government Pleader (Tax) appearing for the respondent submitted that the time of filing the appeal is 3 months plus 1 month which expired in October 2023. Hence, there is a delay of more than 4 months to prefer the appeal before the respondent / The Assistant Commissioner (ST), Chennai, and the petitioner may be directed to pay 15% of the disputed tax.

8. Heard both sides and perused the materials available on record.

9. In the instant case, the person in charge of generating E-way bills is new to handling the generation of E-way bills. The said person generated two E-way bills for the same invoice applicable to the same consignee with GSTIN number. In fact, even though duplicate E-way bills were generated, only one consignment was sent to the consignee with one E-way bill. The total number of E-way bills mentioned by the respondent was 12. This means there are 6 original E-way bills and 6 E-way bills issued for the same invoice. Admittedly, only 6 consignments with 6 E-way bills were sent and invoices were sent to the consignee and the GST collected under the said invoices was paid to the department and mentioned in the returns filed

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by the petitioner during the period. By inadvertence, the person who handled the generation of E-way bills generated 2 EWB for each invoice, which is only a technical mistake in the portal at the relevant time. The petitioner has not preferred the appeal challenging the order passed by the respondent dated 09.06.2023 and the limitation period for filing the same is 3 months plus 1 month which expired in October 2023. Hence, there is a delay of more than 4 months to prefer the appeal before the respondent.

10. **In view of the above factual matrix of the case, this Court is of the considered view that the petitioner shall be directed to pay 15% of the disputed tax on or before 25.03.2024 and on payment of the same, the petitioner may prefer the appeal before the respondent / The Assistant Commissioner (ST) Chennai, within a period of two weeks thereof and it is made clear that the Appellate Authority shall not insist on the limitation period and is directed to entertain the appeal if it is filed by the petitioner within the period of two weeks and the same is in order.**

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J.SATHYA NARAYANA PRASAD, J.

11. In the result, the **writ petition stands disposed of with the above observation and direction**. No costs. Consequently, connected miscellaneous petitions are closed.

08.03.2024

cda
Index : Yes/No
Speaking/Non Speaking order

To

The Assistant Commissioner (ST)
Thirumullaivoyal Assessment Circle,
Room No.115, 1st Floor,
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Integrated CT Building, Park Town,
Chennai – 600 003.

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