IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.7429, 7432 & 7768 of 2024
and
W.M.P.8314, 8315, 8317, 8704, 8707 & 8318 of 2024

In all W.P's :

TMF Business Services Limited,
Rep.by its Chief Financial Officer, Mr. Uday Uchil,
No.45, Celestial Point,
Damodharan Street,
T.Nagar, Chennai,
Tamil Nadu – 600 017. ... Petitioner

Versus

1.The Union of India,
Rep.by the Secretary,
Department of Revenue, Ministry of Finance,
No.137, North Block,
New Delhi – 110 001.

2.Central Board of Indirect Taxes & Customs,
Rep.by its Director,
(CBIC) North Block,
New Delhi – 110 001.

3.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

4.State Tax Officer, Group-X,
Inspection-I,
No.01, PAPJM Buildings,
Greams Road, Thousand Lights,
Chennai – 600 006.

5.State Tax Officer, Group-III,
Intelligence - I,
No.01, PAPJM Buildings,
Greams Road, Thousand Lights,
Chennai – 600 006. ... Respondents

Prayer in W.P.No.7429 of 2024 : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari calling for the records of the Impugned Order with reference to GSTIN 33AAECS0591F2ZK/2017-2018 dated December 31, 2023 in the files of the fifth respondent and quash the same as arbitrary, without jurisdiction and void.

Prayer in W.P.No.7432 of 2024 : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari calling for the records in F.N.CBIC-20013/1/2023-GST in the files of the second respondent and quashing the Impugned Notification No.09/2023-Central Tax dated March 31, 2023 as manifestly arbitrary, void, contrary to the provisions of Section 168A of the CGST Act, 2017 and violative of Article 14, 19(1)(g) and 21 of the Constitution of India.

Prayer in W.P.No.7768 of 2024 : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari calling for the records in G.O Ms. No. 41 in the files of the third respondent and quashing the impugned notification dated April 05, 2023, as manifestly arbitrary, void, contrary to the provision of Section 168A of the TNGST Act 2017, and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

In all W.P's :

For Petitioner : M/s. Kumar Visalaksh

For Respondents : Mr. T.N.C. Kaushik,
Additional Government Pleader

COMMON ORDER

An impugned order dated 31.12.2023 is assailed with regard to the confirmation of tax demand under the heads relating to 'sundry creditors' and 'income received'.

2. The petitioner is engaged in the provision of non-banking financial services. Upon receipt of show cause notice dated 27.09.2023, the petitioner submitted a reply dated 18.12.2023. In such circumstances, the order impugned herein was issued on 31.12.2023.

3. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that such order dealt with seven issues. Out of the seven issues, he pointed out that five issues were decided in favour of the petitioner. By referring to issue No.5 pertaining to sundry creditors,

learned counsel submitted that tax liability was imposed on the total trade receivable of Rs.27,12,93,000/-. After further submitting that the head of claim relating to 'Trade and other receivables' was considered and dropped, he pointed out that a patent error was committed by treating the total trade receivables on pan-India basis as the taxable turnover.

4. As regards 'Income received' learned counsel submitted that the income of Rs.180,64,88,000/- was treated as taxable turnover and that tax was imposed thereon at the rate of 36% instead of 18%. By referring to the GSTR-9C reconciliation statement of the petitioner, learned counsel submitted that the total turnover was recorded therein as Rs.8,82,352/-. In view thereof, learned counsel contends that the impugned order is completely unsustainable with regard to the two issues referred to above.

5. Mr.T.N.C. Kaushik, learned Additional Government Pleader, appears on behalf of the respondents. On both the above mentioned issues, he submits that the tax proposal was confirmed in view of the failure of the petitioner to submit that the trial balance pertaining to its operations in Tamilnadu. He further submits that the petitioner failed to attend the personal hearing.

6. Upon examining the impugned orders, the fourth issue dealt with therein is trade and other receivables. It appears that the total trade receivables of the corporate entity was drawn from the financial statement of such corporate entity. Upon consideration of the reply on this issue, further proceedings were dropped. However, the same sum of Rs.22,12,93,000/- was treated as a taxable turnover under the fifth issue pertaining to sundry creditors and tax liability was imposed on such amount. Given that the issue relating to sundry creditors pertains to alleged non-payment by the petitioner for supplies received, the imposition of tax liability on the total value of trade receivables flies in the face of reason. Even assuming that dues to sundry creditors were not discharged, only the trade payables and not receivables should have been taken into account. Therefore, the impugned order is unsustainable as regards this issue.

7. The next issue that learned counsel for the petitioner focused attention was 'Income received'. On this issue also, the total income was taken from the financial statement and tax appears to have been imposed on such turnover at 36%. In relation to this issue, the petitioner has placed on record the reconciliation statement in GSTR-9C to contend that the annual

turnover under the relevant registration was only Rs.8,82,352/-. Once again, the impugned order confirms the tax demand solely on the ground that the trial balance for Tamilnadu was not provided.

8. Therefore, the impugned order dated 31.12.2023 is set aside insofar as it pertains to the issues relating to sundry creditors and income received. As a corollary, these two issues are remanded for reconsideration by the 5th respondent. After providing a reasonable opportunity to the petitioner, including a personal hearing, the 5th respondent is directed to pass a fresh order within two months from the date of receipt of a copy of this order.

10. W.P.Nos.7429, 7432 & 7768 of 2024 are disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

15.04.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: No

klt

To

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Department of Revenue, Ministry of Finance,
No.137, North Block,
New Delhi – 110 001.

2.The Director,
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