



W.P. No. 7635 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No. 7635 of 2024

&

W.M.P. Nos. 8549 & 8550 of 2024

M/s. Salcomp Manufacturing India Private
Ltd.,
Nokia Telecom SEZ,
SIPCOT Industrial Park Phase – III,
Chennai Bangalore Highway,
Sriperumbudur – 602 105
rep. by its Director.

..Petitioner

Vs.

1. Commissioner,
CGST and Central Excise,
Chennai Outer,
Newry Towers, No.2054-I,
II Avenue, Anna Nagar,
Chennai – 600 040.

2. Superintendent of GST,
Sriperumbudur Division.

..Respondents



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Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the 1st respondent in proceedings No. C.No.V/1/34/2018- Adj. CH-Outer in Order-In-Original No. 02/2021 dated 30.01.2021 passed in respect of Assessment Years 2011-12 to 2015-16 and quash the same.

For Petitioner :: Ms.G. Dhana Madhri for
M/s. Agam Legal Associates

For Respondents :: Mr. Ramesh Kutty,
Senior Standing Counsel

ORDER

An Order-in-Original dated 30.01.2021 in respect of assessment years 2011-2012 to 2015-2016 is challenged in this writ petition.

2. The petitioner is engaged in the manufacture of power supplies, electronic goods, chargers for mobile phones and the like. The petitioner operates from a Special Economic Zone. A show cause notice was issued to the petitioner on 18.04.2017 and such show cause notice was replied to on



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16.05.2017. On receipt of personal hearing notice in December 2020, the petitioner replied thereto. It appears that the impugned order was issued thereafter in January, 2021. The petitioner asserts that such impugned order was not served on the petitioner and the petitioner was unaware of the same until the petitioner received a communication dated 10.07.2023. Immediately upon receipt thereof, the petitioner requested for a copy of the order by pointing out that such order was not communicated earlier. The order was enclosed thereafter by the respondents along with the communication dated 26.02.2024. The present writ petition was filed in the said facts and circumstances.

4. Learned counsel for the petitioner submits that the same issue arose for consideration in relation to other assessment years. The proceedings relating thereto were decided in favour of the petitioner. Therefore, learned counsel submits that the petitioner has a strong case on merits. Learned counsel further submits that Section 73(4B) of the Finance Act, 1994 requires the Central Excise Officer to determine the service tax liability within a period of 6 months or one year from the date of notice,



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depending on whether the case falls within the scope of sub-section (1) or the proviso to sub-section (1) or the proviso to sub-section (4), respectively. By pointing out that the show cause notice was issued on 18.04.2017, whereas the impugned order was issued on 30.01.2021, learned counsel submits that the mandatory prescription in the aforesaid provision was flouted. Since the order was not communicated to the petitioner, learned counsel submits that the interest of justice warrants reconsideration.

5. Mr.Ramesh Kutty, learned Senior Standing Counsel, accepts notice for the respondents. By referring to the communication dated 26.02.2024 from the respondents to the petitioner, he points out that the impugned order was communicated by speed post to the petitioner on 03.02.2021. He also points out that the issue arising in the impugned assessment was decided in favour of the petitioner by the Telangana and Andhra Pradesh High Court in *GMR Aerospace Engineering Limited V. Union of India*, (2019) 1 ALT 633(DB), and that the Hon'ble Supreme Court declined to interfere with such order.



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6. On examining the Order-in-Original, it follows from paragraph 4.3.4 thereof that the Special Leave Petition filed by the tax authorities against the order of the Telangana and Andhra Pradesh High Court was dismissed by the Hon'ble Supreme Court in SLP(Civil) Diary No. 22140 of 2019. Consequently, the judgment of the Telangana and Andhra Pradesh High Court holds the field as on date. In these circumstances, it is just and appropriate that the petitioner be provided with an opportunity to contest the tax demand. It should also be noticed, in this regard, that there is no proof of service of the impugned order on the petitioner.

7. Therefore, the impugned order is quashed and the matter is remanded for reconsideration by the 1st respondent. The 1st respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of a copy of this order.



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SENTHILKUMAR RAMAMOORTHY,J.

nv

8. The writ petition is disposed of accordingly. No costs.

Connected W.M.P. is closed.

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nv

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

To

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