IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7759 of 2024
and
W.M.P.Nos.8689 & 8690 of 2024

Tvl. R.P. Constructions,
Rep.by its Managing Partner Mr. R. Partheepan,
107, Gandhikanavai, Ramalal,
Gudiyaatham.
Vellore District – 632 602. … Petitioner

Versus

1.The State Tax Officer,
Gudiyaatham [East] assessment circle,
No.127, Gandhi Road,
Nadupettai [Opp. National Higher Secondary School],
Gudiyaatham, Vellore District – 632 602.

2.The Branch Manager,
State Bank of India,
15, Railway Station Road,
Kondasamudram,
Gudiyaatham – 632 602. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the 1st respondent proceedings in GSTIN:33AAJFR0769E1Z9/2022-23 dated 07.09.2023 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr. D. Vijayakumar

For Respondent : Mr. V. Prashanth Kiran
Government Advocate (Tax) for R1.

ORDER

An assessment order dated 07.09.2023 is assailed on the grounds of breach of the principles of natural justice and failure to consider all the GSTR-3B returns filed by the petitioner.

2.The petitioner is a registered PWD contractor, who carried out work for the Gudiyatham Panchayat. The petitioner had engaged the services of a consultant to handle GST compliances. It is asserted that the consultant had informed the petitioner that he had appeared before the respondent and explained that the alleged disparity in turnover was incorrect. After the impugned order was issued on 07.09.2023, the respondents proceeded to attach the bank account of the petitioner by issuing attachment notice dated 18.01.2024. The present writ petition was filed in the said facts and circumstances.

3. Learned counsel referred to the GSTR-3B return for the month of May for the assessment period 2022-2023 and pointed out that the taxable value as regards the relevant month is Rs.14,500/-. By referring to the GSTR-3B return for the month of June in the same assessment period, he points out that the total taxable value of supply was Rs.5,47,200/-. Therefore, learned counsel contends that the assessing officer erred by only taking into account the petitioner's GSTR-3B return for the month of May for the assessment period 2022-2023. He also submits that the petitioner was not heard before the impugned order was issued.

4. Mr. V.Prashanth Kiran, learned Government Advocate, accepts notice for the first respondent. He points out that proceedings were initiated against the petitioner by issuing Form GSTR ASMT-10 in January 2023. He also points out that the petitioner was offered a personal hearing on three different dates. Since principles of natural justice were complied with, he contends that no case is made out for interference.

5. The petitioner placed on record the GSTR 3B returns for several months. On comparing the impugned order against the GSTR 3B return

for the month of May 2022-2023, it is evident that the turnover reflected in one single month has been compared with the turnover reflected in the GSTR 7 return filed by the counter party. Given the fact that the GSTR 7 return is an annual return, the comparison made by the adjudicating authority is undoubtedly unsustainable. At the same time, it should be noticed that the petitioner was provided multiple opportunities but failed to respond to either the notice in GSTR ASMT-10 or the show cause notice.

6. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

7. Under such circumstances, the impugned order dated 07.09.2023 is quashed subject to the condition that the petitioner remits 10% of the disputed tax demand within a period of three weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the first respondent is directed to provide a

reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within two months therefrom.

8. As a corollary of the assessment order being quashed, the bank attachment stands raised.

9. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

22.03.2024

Index : Yes
Speaking Order : Yes
Neutral Citation Case : Yes
klt

To

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