IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7752 of 2024 and
W.M.P.Nos.8673 & 8674 of 2024

Tvl. Saravanaa Projects & Co.,
Represented by its Partner,
Mr.M.S.Hari Baabhu,
Having office at:
No.99A, Mettu Street,
Thirukazhukundram-603 204. ...Petitioner

Vs.

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram-603 109. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in connection with the impugned order GSTIN 33ABGFS2462R1ZO/2017-2018 dated 26.12.2023 issued by the respondent and quash the same.

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondent : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

An order dated 26.12.2023 is assailed both on the ground that a personal hearing was not offered and on the ground that the petitioner's reply was disregarded.

2. The petitioner is engaged in the execution of road contracts and civil contracts for the Highways Department of the State of Tamil Nadu. The petitioner received a show cause notice dated 14.08.2023 calling upon the petitioner to show cause in respect of about ten discrepancies. The petitioner replied thereto on 12.12.2023. With regard to defect no.1, the petitioner stated that the difference between the turnover reported under the GST regime and the turnover reflected in the petitioner's profit and loss account is attributable to turnover during the pre-GST period between 01.04.2017 and 30.06.2017. The petitioner asserts that his explanation was disregarded. Similarly, as regards defect no.4, the petitioner stated that the purchase value was erroneously entered in the GSTR 9C return as Rs.6,40,51,735/- instead of 4,99,76,299/-, whereas the purchase value was reflected correctly in the profit and loss account. The

petitioner contends that the reply with regard to defect no.2 was not taken into consideration. Since the impugned order was issued by disregarding these responses, the present writ petition was filed.

3. Learned counsel for the petitioner referred to the reply dated 12.12.2023 and pointed out that the petitioner had explained the disparity between the turnover reported in returns filed under the GST enactments and the turnover reflected in the profit and loss account. He also pointed out that the petitioner had produced a certificate from the Chartered Accountant to explain the inadvertent error committed while filing the GSTR 9C return. He further submitted that no personal hearing was granted after the petitioner's reply dated 12.12.2023. Since principles of natural justice were not adhered to, learned counsel contended that the impugned order calls for interference.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She submits that the explanation of the petitioner with regard to defect no.1 was not corroborated by producing any documents to establish that the turnover of Rs.6,73,26,009/- is attributable to the VAT period and not the GST period. She further

submits that a personal hearing was provided to the petitioner under personal hearing notice dated 03.10.2023.

5. Upon examining the petitioner's reply dated 12.12.2023, it follows that the explanation of the petitioner is that the turnover of Rs.6,73,26,009/- is attributable to the pre-GST period running from 01.04.2017 to 30.06.2017. It also appears that the petitioner did not place on record documents to establish that this turnover is attributable to the pre-GST period. In the impugned order, the respondent has taken note of the fact that the VAT returns for the said period indicated 'Nil' turnover. The conclusion of the respondent on this count cannot be completely disregarded as devoid of merit.

6. As regards defect no.4, the petitioner's explanation is that an inadvertent mistake was committed while filing the GSTR 9C return. In support of this contention, the certificate dated 02.12.2023 of the Chartered Accountant was submitted. On this issue, it appears that the profit and loss account corroborates the assertion in the Chartered Accountant's certificate. These aspects were disregarded while confirming the demand in respect of discrepancy no.4. As regards discrepancy no.2, the petitioner had annexed documents to substantiate

the reply. The said reply was disregarded on the ground that the tax payer had not proved whether the suppliers had filed GSTR 1 return in relation to such invoices.

7. Significantly, it is noticeable that no personal hearing was offered after the petitioner submitted a reply dated 12.12.2023. When all these facts and circumstances are considered cumulatively, the impugned order calls for interference so as to provide another opportunity to the petitioner.

8. Therefore, the impugned order dated 26.12.2023 is quashed in so far as it pertains to defect nos.1,2 and 4. The petitioner is permitted to submit all relevant documents before the respondent within a period of 15 days from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to reconsider the matter as regards defect nos. 1, 2 and 4 and issue a fresh order after providing a reasonable opportunity to the petitioner, including a personal hearing. Such order shall be issued within a period of two months from the date of receipt of additional documents from the petitioner.

9. The writ petition is disposed of on the above terms. There will be

no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.03.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

kj

To

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram-603 109.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

W.P.No.7752 of 2024 and
W.M.P.Nos.8673 & 8674 of 2024

22.03.2024