IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.8229 & 8234 of 2024
and
W.M.P.Nos.9188, 9190 & 9195 of 2024

In W.P.No.8229 of 2024:

Jeyaraman … Petitioner

Versus

1.State Tax Officer,
Valparai Assessment Circle,
Coimbatore Division,
Tamil Nadu.

2.State Tax Officer, (FAC)
Valparai, Pollachi,
Coimbatore,
Tamil Nadu. ... Respondents

In W.P.No.8234 of 2024:

Jeyaraman … Petitioner

Versus

1.State Tax Officer,
Valparai Assessment Circle,
Coimbatore Division,
Tamil Nadu.

2.State Tax Officer, (FAC)
Valparai, Pollachi,
Coimbatore,
Tamil Nadu.

3.Indian Bank,
70, Coimbatore Road,
Pollachi – 642 002. ... Respondents

Prayer in W.P.No.8229 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the respondents herein in impugned order in GSTIN-33ACDPJ9955E1ZK/2019-20 dated 21.09.2023 passed by the 1st respondent and consequential order in GSTIN – 33ACDPJ9955E1ZK/2019-20 dated 16.10.2023 passed by the 2nd respondent and to quash the same.

Prayer in W.P.No.8234 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in the proceedings initiated in GSTIN: 33ACDPJ9955E1ZK/2018-19 dated 23.02.2024 and quash the same as arbitrary, unjust and illegal and further direct the 1st respondent to release the attachment of the bank accounts of the petitioner company, held with the 3rd respondent, in the proceedings of the 1st respondent in GSTIN: 33ACDPJ9955E1ZK/2018-19 dated 23.02.2024.

In both W.Ps:

For Petitioner : Mr. G. Vardini Karthik

For Respondents : Mr. V. Prashanth Kiran,
Government Advocate (Tax)

COMMON ORDER

The assessment order dated 21.09.2023 and the consequential recovery notice dated 23.02.2024 and bank attachment are challenged in the writ petitions.

2. The petitioner undertakes Government works on contract basis. Pursuant to the show cause notice dated 12.12.2022, the impugned order dated 21.09.2023 was issued by the State Tax Officer, Valparai Assessment Circle. The petitioner points out that a separate assessment order for the same assessment period was issued thereafter on 16.10.2023 by the State Tax Officer (FAC), Valparai. In these circumstances, the petitioner filed a rectification petition dated 12.02.2024 and thereafter approached this Court.

3. Learned counsel for the petitioner submits that proceedings may be initiated against a registered person either under Section 73 or Section 74 and that two separate proceedings cannot be instituted under Sections 73 and 74 in respect of the same assessment period and the same issues. Since two proceedings were initiated under Section 73 and 74, respectively, learned counsel contends that the petitioner is entitled to pick the proceeding under Section 73, since such proceeding is comparatively beneficial to the petitioner.

4. Mr.V.Prashanth Kiran, learned Government Advocate (Tax), accepts notice on behalf of respondents. He submits that the order dated 16.10.2023, which is a subsequent order was issued erroneously. Therefore, by resorting to s*uo motu* powers of rectification, he submits that the rectification order dated 25.10.2023 was issued for withdrawing the said order. Therefore, he submits that only the order dated 21.09.2023 survives as on date.

5. In the affidavit, the petitioner has averred that he was not aware of the show cause notice uploaded on the GST portal and therefore could

not reply thereto. From the impugned order, it is evident that the petitioner was not heard although personal hearing notices were issued on 19.01.2023, 15.02.2023 and 19.05.2023. As a registered person, the petitioner was under an obligation to monitor the GST portal continually and cannot be absolved of responsibility in such regard.

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. Since the petitioner was not heard before the impugned order was issued and by taking into account the fact that proceedings were initiated against the petitioner both under Sections 73 and 74 of applicable GST statutes, it is just and appropriate that the petitioner be given an opportunity to contest the tax demand. Solely for that purpose, the impugned order dated 21.09.2023 calls for interference.

8. Therefore, the impugned order dated 21.09.2023 is quashed and the matter is remanded for reconsideration subject to the condition that the

petitioner remits 10% of the disputed tax demand as agreed to within two 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 dated 12.12.2022 within the aforesaid period. Subject to receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within two months from the date of receipt of the petitioner's reply. As a corollary of the assessment order being quashed, the recovery notice is also quashed and the bank attachment is raised.

9. W.P.Nos.8229 & 8234 of 2024 are disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

26.03.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY, J.,

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