IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8543 of 2024
and
W.M.P.No.9504 of 2024

M/s. Raja Constructions,
240, Karur Road, Kangayam,
Tiruppur – 638 701,
Rep.by its Partner,
Mr. Nallasamygounder Dhanasekar ... Petitioner

Versus

Assistant Commissioner (ST),
Kangeyam Assessment Circle,
Kangeyam. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Ref. ந.க.*165/2024/*அ*1* dated 13.03.2024 with DRC-13 issued by the respondent, quash the same and direct the respondent to refund the sum of Rs.1,06,54,472/- with interest, which was illegally collected contrary to Section 107(7) of the CGST/TNGST Act, 2017.

For Petitioner	:	Mr. T. R. Ramesh
For Respondent	:	Mr. C. Harsha Raj, Additional Government Pleader (Tax)

ORDER

Garnishee order dated 13.03.2024 is subject to challenge in the writ petition and the petitioner also seeks refund of amounts appropriated from the petitioner's bank account pursuant to such garnishee order.

2. By order dated 11.12.2023, the tax demand against the petitioner was confirmed and penalty was also imposed. After paying the tax liability under the said order, the petitioner filed an appeal before the appellate authority on 13.03.2024. Just prior to the filing of the appeal, the garnishee order was issued and a total sum of Rs.1,06,54,472/- was remitted by the bank from and out of the petitioner's bank account to the respondent.

3. Learned counsel for the petitioner submits that the appeal was filed on 13.03.2024 and that the garnishee proceeding was also initiated on the same day. By referring to sub-section (7) of Section 107 of the Tamil Nadu Goods and Services Tax Act, 2017, learned counsel submits that the respondent was not entitled to appropriate the amounts from the bank account. Therefore, he contends that the petitioner is entitled to

refund.

4. Mr. C. Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondent. He submits that the garnishee order was issued before the appeal was filed and the amounts were also appropriated before the appeal was registered.

5. Since an appeal is pending before the appellate authority, the entitlement of the petitioner to refund of the penalty amount is dependent on the petitioner succeeding in such appeal. Therefore, at this juncture, refund of such amount cannot be ordered. However, by taking into account the fact that the entire tax liability was discharged and even the penalty amount was recovered by the respondent, it is just and necessary that the appeal be disposed of expeditiously.

6. Hence, W.P.No.8543 of 2024 is disposed of by issuing the following directions:-

i) The appellate authority is directed to dispose of the petitioner's appeal against the order dated 11.12.2023 within two months from the date of receipt of a copy of this order;

ii) It is needless to say that the penalty amount appropriated by the respondent shall abide by the outcome of the appeal;

iii) The garnishee order has worked itself out by appropriation of the penalty amount. Therefore, neither the respondent nor the Karur Vysya Bank, Kangeyam branch shall restrict the petitioner from operating the relevant bank account;

iv) There will be no order as to costs. Consequently, connected miscellaneous petition is also closed.

01.04.2024

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

klt

To

Assistant Commissioner (ST),
Kangeyam Assessment Circle,
Kangeyam.

SENTHILKUMAR RAMAMOORTHY,J

klt

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