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W.P.Nos.8599 & 8607 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.8599 & 8607 of 2024

and

W.M.P.Nos.9561, 9563 & 9571 of 2024

Larsen & Toubro Limited,
(Rep.by its Head – Finance and Accounts, Mr.V.N.Somanathan),
P.O.Box No.2, L and T Rubber Processing Machinery,
Chennai – Bangalore Highway,
Vedal Village, Kancheepuram,
Tamil Nadu – 631 561.

... Petitioner
(in both W.Ps)

Versus

The Assistant Commissioner (ST)(FAC),
(also known as The Commercial Tax Officer),
Kancheepuram Assessment Circle.

... Respondent
(in both W.Ps)

Prayer in W.P.No.8599 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in the proceedings in GSTIN:33AAACL0140P4ZN/2018-19 dated 30.12.2023 along with the Form DRC-07 with Ref.No.ZD331223285196F dated 30.12.2023 and quash the same.



W.P.Nos.8599 & 8607 of 2024

Prayer in W.P.No.8607 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari Mandamus, calling for the records on the files of the respondent herein in the order with Ref.No.ZD3303241079040 dated 18.03.2024 along with the annexure in GSTIN: 33AAACL014P4ZN/2017-28 dated 18.03.2024 and quash the same.

In both W.Ps :

For Petitioner : Mr. N. Prasad

For Respondent : Mr. Harsha Raj,
Additional Government Pleader (Tax)

ORDER

An order in original dated 30.12.2023 pertaining to assessment period 2017-18 is challenged in W.P. No.8559 of 2024. In W.P.No.8607 of 2024, the order rejecting the rectification petition is challenged.

2. After issuance of intimation dated 30.06.2023 in respect of several defects, a show cause notice was issued on 30.09.2023. Such show cause notice was replied to on 04.10.2023. The impugned order in original was issued thereafter on 30.12.2023.



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3. Learned counsel for the petitioner focused on four issues in the impugned order in original. The first of such issues pertains, to discrepancies between the GSTR 3B return of the petitioner and the auto-populated GSTR 2A return. On this issue, learned counsel referred to the show cause notice and pointed out that it is evident therefrom that the Input Tax Credit (ITC) reflected in the GSTR 2A was higher than that availed of by the petitioner and reflected in the GSTR 3B return. After pointing out that this was stated in the petitioner's reply to the show cause notice, by referring to the impugned order, learned counsel pointed out that the tax demand in relation thereto was confirmed by imposing tax on the excess amount reflected in the GSTR 2A. The second issue dealt with by learned counsel pertains to imposition of cess. As regards this issue, learned counsel referred to the reply to the show cause notice and pointed out that the petitioner stated that cess was paid in May 2018 along with applicable interest. He also pointed out that the copy of the relevant GSTR 3B return was enclosed with the reply.

4. The third issue dealt with by learned counsel was with regard to the receipt of scrips by the petitioner. On this issue, he pointed out that the



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show cause notice called upon by the petitioner to explain why ITC should not be reversed in relation thereto. Upon receipt of such show cause notice, he pointed out that the petitioner replied by stating that no ITC was availed of in respect of such scrips. In spite of such reply, he submits that liability was imposed by treating it as taxable turnover. The last issue pertains to obligations undertaken by the petitioner as part of corporate social responsibility. He submitted that tax was imposed in relation thereto although the activity in question related to the drilling of a bore well for a school.

5. Mr. C. Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondent. He submits that the show cause notice pertains to about 26 issues. Upon consideration of the petitioner's reply, he submitted that about 21 issues were dropped. In these circumstances, he submits that interference is not warranted under Article 226 in respect of issues decided against the petitioner.

6. Out of the total tax liability, it appears that almost Rs.5.17 crores pertains to the discrepancies between the GSTR 3B and GSTR 2A returns.



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Even from the intimation issued on 31.05.2023, it is evident that the amount reflected in the GSTR 2A auto-populated return is in excess of the ITC availed of and reflected in the petitioner's GSTR 3B returns. In those circumstances, imposition of GST on the excess amount reflected in the GSTR 2A return appears *prima facie* untenable. As regards the issue relating to cess, the petitioner has stated clearly that cess was paid in May 2018 by enclosing the relevant GSTR 3B return. In spite of that, the impugned order imposed liability with regard to cess. As regards the liability imposed with regard to scrips, the show cause notice called upon the petitioner to show cause as to why ITC should not be reversed in relation to the duty credit scrips. By contrast, in the impugned order, the said amount has been treated as a turnover from scrips. Since the petitioner was not provided an opportunity to show cause with regard to treating the value of scrips as turnover, the findings in relation thereto also cannot be sustained.

7. When the above facts and circumstances are taken into account, the impugned order dated 30.12.2023 is unsustainable. As a consequence, such order is set aside in relation to the issues forming the subject of the



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writ petition and the matter is remanded to the respondent for reconsideration. Since the petitioner was not provided an opportunity to show cause with regard to the scrips, the petitioner is permitted to file a reply in relation thereto within two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue a fresh order within two months from the date of receipt of the petitioner's reply.

8. These Writ Petitions are disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

02.04.2024

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

To

The Assistant Commissioner (ST)(FAC),
(also known as The Commercial Tax Officer),
Kancheepuram Assessment Circle.



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SENTHILKUMAR RAMAMOORTHY,J.

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