IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8734 of 2024 and
W.M.P.Nos.9749 & 9751 of 2024

Hitachi Systems India Private Limited,
Represented by its Authorised Signatory,
Mr.Anil Kumar Sharma,
No.SKCL-ICON, C-42 & C-43, I floor,
CIPET Road, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai-600 032. ...Petitioner

Vs.

1. The Union of India,
Represented by the Secretary,
Department of Revenue, Ministry of Finance,
No.137, North Block,
New Delhi-110 001.

2.The Goods & Services Tax Council,
Represented by its Secretary,
GST Council Secretariat,
5th floor Tower – II
Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi-110 001.

3.Central Board of Indirect Taxes & Customs,
Represented by its Chairman,
North Block, New Delhi-110 001.

4.The State of Tamil Nadu,
Represented by its
Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Fort St. George,
Chennai-600 009.

5. Principal Secretary/
Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai-600 005.

6.The Assistant Commissioner (ST),
Guindy Assessment Circle,
2nd floor, Integrated Building for
Commercial Taxes and Registration Department,
Nandanam, Chennai-600 035.

7.The State Tax Officer,
No.253, 2nd floor,
Integrated Building for Commercial Taxes
and Registration Department,
Nandanam, Chennai-600 035.

8. The State Tax Officer,
Group-I, Inspection – II,
Intelligence, No.1, PAPJM Building,
Chennai-600 006. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in GSTIN:33AAACM6396E1Z1/2017-2018 dated 20.12.2023 [DRC-07 reference number ZD3312231481402 dated 20.12.2023] on the file of the 7th respondent and quash the same as arbitrary, without jurisdiction and void.

For Petitioner : Mr.S.Muthu Venkataraman

For R1 to R3 : Mr.B.Ramanakumar,
Senior Standing Counsel,

For R4 to R8 : Mr.T.N.C.Kaushik,
Additional Govt. Pleader (T)

ORDER

An assessment order dated 20.12.2023 is assailed on the ground that the petitioner was not provided a reasonable opportunity to contest the tax demand.

2. The petitioner received an intimation on 23.01.2023 with regard to about 12 alleged defects. Such intimation was replied to on 13.02.2023. Thereafter, a show cause notice was issued on 07.03.2023 and replied to on 13.03.2023. The impugned order was issued in the above facts and circumstances on 20.12.2023.

3. Learned counsel for the petitioner focused on the discussion in the impugned order relating to defect no.12 and defect no.2. With regard to defect no.12, learned counsel pointed out that the petitioner had replied to the show cause notice and stated that the petitioner is unable to

understand as to where the amounts specified in the show cause notice were taken from. He further submits that without clarifying this aspect, the demand was confirmed. As regards defect no.2, learned counsel points out that the petitioner had produced invoices to establish that the sales were zero-rated sales. He further submits that if the SEZ sale agreement copy and other documents had been requested for, the petitioner would have produced the same. By further submitting that the impugned order contains infirmities with regard to other defects also, learned counsel submits that the petitioner be provided another opportunity to contest the tax demand.

4. Mr.B.Ramanakumar, learned senior standing counsel, accepts notice for respondents 1 to 3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for respondents 4 to 8. Mr.T.N.C.Kaushik points out that the petitioner replied to the intimation and show cause notice and these replies were taken into consideration while issuing the impugned order. Therefore, he submits that no interference is warranted.

5. In the petitioner's reply to the show cause notice, as regards defect no.12, the petitioner has stated that it is unable to understand as to where the amounts specified in the show cause notice were taken from. The petitioner also stated that once the said information is provided, the petitioner would be in a position to respond. In spite of such reply, in the operative portion of the impugned order, the following finding was recorded:

> *"The tax payer has not produced any specific clarification and neither filed any supporting documents for the discrepancy. Due to lack of such documents, the proposal is hereby confirmed."*

As regards defect no.2, the petitioner had stated that zero-rated supplies were made and enclosed relevant invoices. In the operative portion of the order, the following finding was recorded:

> *"The tax payer has produced only invoice copies. They have not produced SEZ sale agreement copy, purchase order copy, bank statement, Endorsement certificate for the entire value. In the absence of such records, the proposal is hereby confirmed. "*

As regards the above defects, it appears that the assessment order was issued without providing a reasonable opportunity to the petitioner to respond to the respective defects by placing relevant documents on record. Solely for such reason, the impugned order calls for interference.

6. At the same time, it should be recognised that such order was issued after an intimation and the show cause notice was received by the petitioner. Since the petitioner has not availed of such opportunities and approached this Court after the assessment order was issued, it is just and appropriate that the petitioner be put on terms.

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

8. Therefore, the impugned order dated 20.12.2023 is set aside 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 a period of two weeks from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is also permitted to submit

additional documents in support of the reply to the show cause notice. Upon receipt of the petitioner's reply and upon being satisfied that the 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.

9. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

02.04.2024

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