IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.8761 & 8764 of 2024 &
W.M.P.Nos.9766, 9767 & 9769, 9770 of 2024

M/s.J.P.Polymers Private Limited,
Having its registered office at
No.5 and 5A, Thiruneermalai Road,
Chrompet,
Nagalkeni, Chennai,
Tamil Nadu- 600 044.
Represented by Mr.Vinjod. J.

... Petitioner in both writ petitions

Vs.

The State Tax Officer (Group-2),
Office of the Deputy Commissioner of State Tax,
Chengalpattu Intelligence Division,
No.870/2A, 1st Floor, Kancheepuram High Road,
Thimmavaram, Chengalpattu - 603 101.

... Respondent in both writ petitions

Prayer in both writ petitions: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in the impugned proceedings against the Order-in-Original in Form GST DRC-07 bearing reference Nos.ZD330324009770S & ZD3303240101339 respectively dated 02.03.2024, under the provisions of CGST Act, 2017 and quash the same and consequently direct the respondent to pass DE NOVA Order.

For Petitioner in
both W.Ps' : Mr.Anil Bezawada
For M.s.Lavanya P.R.

For Respondent in
both W.Ps' : Mr.V.Prasanth Kiran
Government Advocate (Taxes)

COMMON ORDER

These writ petitions have been filed to quash the Orders-in-Original in Form GST DRC-07 bearing reference Nos. ZD330324009770S and ZD3303240101339, both dated 02.03.2024, and to direct the respondent to pass a de novo order.

2. The learned counsel for the petitioner submits that subsequent to the inspection conducted by the respondent at the petitioner's premises on 03.11.2022, notices in Form GST DRC-01A were issued under Section 74 of the CGST Act. The petitioner filed replies enclosing detailed reconciliations as required by the impugned notices. However, without considering the replies, the respondent again issued show cause notices in Form GST DRC-01 proposing to demand tax on the same allegations as stated in the earlier notices. The petitioner again filed replies in Form GST DRC-06 and appeared in person. Nevertheless, without considering the replies submitted, the respondent passed the impugned orders in Form GST DRC-07 confirming the demand. The learned counsel further submits that in similar circumstances,

involving the same petitioner company, this Court in W.P.Nos.14655 of 2024 and connected matters, by an order dated 13.06.2024, set aside the orders for non-consideration of the petitioner's replies. Hence, the counsel prays for a similar order in these writ petitions.

3. The learned Government Advocate (Taxes) appearing for the respondent also does not dispute this contention.

4. At this juncture, considering the submissions made by the learned counsel for the petitioner and the learned Government Advocate and the material placed before this Court, it becomes evident that the crux of the issue revolves around the non-consideration of the petitioner's replies. The relevant portion of the order dated 13.06.2024 in W.P.No.14655 of 2024 and connected matters is extracted hereunder:

> *4. On perusal of the impugned orders, it is noticeable that the petitioner-s reply to the show cause notice is referred to therein but no findings are recorded in respect of reasons for rejecting such reply. By way of illustration, the findings in respect of defect no.1 are set out below:*
>
> > *?The reply has been scrutinized and identified that reply is not in order due to neither filed any relevant document to the payment of difference of tax liability Rs.182673/- nor document of proof to substantiate no difference turnover between GSTR 3B and GSTR 1. Therefore the proposal of levy tax Rs.182673/- is hereby confirmed?*

Similar findings were recorded in respect of each defect. The petitioner has placed on record the replies to the show cause notice. The petitioner has replied separately to each defect. On examining the reply, for instance in respect of defect no.1 relating to the difference between the petitioner-s GSTR 3B and GSTR 1 statement, it is noticeable that the petitioner has explained the discrepancy in considerable detail. I find no discussion on the explanation of the petitioner. Instead, it is recorded that the reply is not in order. On account of the failure of the respondent to duly consider the petitioner's reply and record reasons for rejecting such reply, orders impugned herein cannot be sustained.

5. For reasons set out above, the impugned orders in original are set aside and these matters are remanded for reconsideration. The petitioner is permitted to submit additional documents, if any, within a period of 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 to the petitioner, including a personal hearing, and thereafter issue fresh orders within three months from the date of receipt of additional documents from the petitioner.

6. These writ petitions are disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

Even in these matters, although the petitioner had filed replies, they were not considered, and the impugned orders were passed without providing sufficient reasons for rejecting the petitioner’s explanations. In view of the above, the orders impugned herein are set aside. The petitioner shall file their replies/objections along with any required documents to the respondent within two weeks from the date of receipt of a copy of this order. Upon receipt, the respondent shall issue a 14-day clear notice, schedule a personal hearing, and thereafter pass appropriate orders on merits and in accordance with the law as expeditiously as possible.

5. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

12.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

r n s

KRISHNAN RAMASAMY.J.,
r n s

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