



WEB COPY



W.P.No.9681 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9681 of 2024 and
W.M.P.Nos.10706 & 10707 of 2024

M/s.Alamelu Construction,
No.30, First floor, 45 feet road,
Vallalar salai, 5th cross, Venkata nagar,
Puducherry 605 011,
Represented by its proprietor,
Mr.R.Karunanidhi.

...Petitioner

Vs.

The Assistant Commissioner of GST & Central Excise,
Division-III, No.14, Municipal Street,
Azeez nagar, Puducherry-605 010.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records connected with order-in-original No.09/2023-GST dated 27.09.2023 passed by the respondent and to quash the same for having been passed in gross violation to the principles of natural justice and contrary to law.

For Petitioner : Mr.N.Viswanathan

For Respondent : Mr.Ramesh Kutty,
Senior Standing Counsel



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ORDER

An order in original dated 27.09.2023 is assailed only in so far as it pertains to interest and penalty liability. Proceedings were initiated against the petitioner by issuing a show cause notice dated 27.02.2023. Even prior thereto, the petitioner had discharged the GST liability on 31.03.2019, 03.04.2019 and 23.04.2019 through the electronic credit ledger. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner submitted that the petitioner is entitled to the benefit of the proviso to Section 50(1) of the Central Goods and Services Tax Act, 2017 and is, consequently, not liable to pay interest. Because the tax liability was discharged prior to the issuance of show cause notice, it is also submitted that the petitioner is not liable to penalty. Learned counsel further submits that the petitioner may be permitted to approach the appellate authority by way of statutory appeal.

3. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice for the respondent. He submits that the petitioner collected taxes in respect of the outward supply of goods/services but failed to remit tax. He also submits that the petitioner discharged the liability after the



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commencement of proceedings and therefore is not entitled to the benefit of the proviso to Section 50(1).

4. The impugned order records that the petitioner discharged GST liability on 31.03.2019, 03.04.2019 and 23.04.2019. Therefore, the limited scope of challenge is with regard to interest and penalty. The order discloses that 100% penalty was imposed. By taking into account the fact that the petitioner discharged the GST liability in 2019 and the fact that 100% penalty was imposed, it is just and appropriate that the petitioner be permitted to present a statutory appeal. Since the time limit for filing such appeal expired, the petitioner shall be put on terms.

5. Learned counsel for the petitioner submits, on instructions, that the petitioner is willing to remit a sum of Rs.2.5 lakhs as a condition for being permitted to present a statutory appeal.

6. Therefore, W.P.No.9681 of 2024 is disposed of by permitting the petitioner to present a statutory appeal before the appellate authority subject to the condition that the petitioner remits a sum of Rs.2.5 lakhs (Rupees two lakhs fifty thousand only) towards interest liability as agreed



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to within a period of three weeks from the date of receipt of a copy of this order. Subject to remittance of the amount specified above, if a statutory appeal is presented within the aforesaid period of three weeks, the appellate authority is directed to receive and dispose of the same on merits without going into the question of limitation. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.04.2024

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

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To

The Assistant Commissioner of GST & Central Excise,
Division-III, No.14, Municipal Street,
Azeez nagar, Puducherry-605 010.



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SENTHILKUMAR RAMAMOORTHY,J.

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