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W.P.No.9652 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9652 of 2024 and
W.M.P.Nos.10682 & 10683 of 2024

M/s.L & T Finance Limited,
(Represented by its Divisional Legal
Manager Shri G.Venkatesan),
205 & 206, Second floor,
Capital Towers, Nungambakkam,
Chennai-600 034.

...Petitioner

Vs.

The Assistant Commissioner,
Valluvar Kottam Assessment Circle,
No.10, Palaniyappa Maligai,
4th floor, Greams Road,
Chennai-600 006.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to passing of the impugned order bearing GSTIN:33AAACW1328G2ZP/2017-2018 dated 31.12.2023 along with Form DRC 07 bearing order Reference No.ZD3312232979717 dated 31.12.2023 passed by the respondent and quash the same as the same being arbitrary, passed in violation of the principles of natural justice.



For Petitioner : Mr.G.Natarajan
For Respondent : Mrs.K.Vasanthamala,
Government Advocate (T)

ORDER

An assessment order dated 31.12.2023 is assailed primarily on the ground of breach of principles of natural justice.

2. Pursuant to an audit of the books of account of the petitioner, a show cause notice dated 29.09.2023 was issued. Such notice was replied to by the petitioner on 14.10.2023 and 27.10.2023. The impugned order was issued thereafter on 31.12.2023.

3. Learned counsel for the petitioner focused on two confirmed demands under the impugned order. The first of these pertains to the difference in outward turnover between the books of account and various returns. With regard to the said difference, by referring to the petitioner's reply dated 15.05.2023 to the audit notice, learned counsel pointed out that the difference arose on account of not reporting all transactions in the GSTR 1 statement and rectifying the same subsequently by filing the annual return in GSTR 9. In particular, he pointed out that the full value



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of exempt supplies of Rs.43,68,93,176/- was not reported in the GSTR 1 where exempt supply of the total value of Rs.29,61,74,392/- was reported. He also pointed out that the tax liability arising upon such reconciliation was remitted under DRC-03. By turning to the tax demand in respect of exempted supply value, learned counsel pointed out that the petitioner submitted sample copies of statement of accounts to establish that the sum of Rs.43,68,93,176/- was interest income which is exempted under applicable GST enactments. By further submitting that the total documentation is extremely voluminous, learned counsel submits that the petitioner would endeavor to produce such documents, if necessary. In any event, he submits that these values are duly reflected in the petitioner's financial statement and can be verified. Learned counsel also points out that the tax demand in respect of addition of assets and depreciation is erroneous on the face of it.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondents. She points out that the petitioner failed to provide proper bifurcation of turnover pertaining to its pan-India operation and Tamil Nadu operations. She further submits that the petitioner should have appeared before the assessing officer at the



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personal hearing and submitted all relevant documents.

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5. In response to the personal hearing notice from the respondent, the petitioner issued communication dated 27.12.2023 stating that the petitioner is currently occupied with the filing of the annual returns for financial year 2022-2023 and therefore requires a deferment of the personal hearing scheduled on 28.12.2023. From the impugned order, it appears that this request was not entertained and the order was issued on 31.12.2023. Although the order refers to a personal hearing notice issued on 31.12.2023, there is nothing on record to indicate that such personal hearing notice was issued. On examining the impugned order with regard to turnover discrepancy as between the different returns, it is noticeable that the petitioner explained the difference in its reply dated 28.07.2023 by pointing out that the lower amount was inadvertently reported in the GSTR 1 statement, which was subsequently rectified by filing the annual return. This aspect has not been noticed in the impugned order and, therefore, the following finding was recorded:

“J.3 The taxpayer has given in the reply that having given the turnover as per GSTR-1, GSTR-3B and GSTR-9, there is no discrepancy in turnover on comparison with different returns. On the other hand,



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tax payer has failed to reconcile the difference as called for in the notice, that is to say, difference arising out of turnover as per their summary against turnover as per GSTR-1, GSTR-3B and GSTR-9C.”

Likewise, as regards the petitioner's claim that turnover of Rs.43,68,93,176/- is exempt, the impugned order records that only sample copies of statement of account was provided. The operative portion of the impugned order is as under:

“B.3 I observed that the tax payer has given only sample copies of statement of accounts of their customers with exemption notification for interest income. But they have failed to furnish details of entire transactions pertaining to the amount involved in the exempted sales to the tune of Rs.43,68,93,176/-, with proper records and documents, in order to verify the eligibility of exemption from payment of GST.

B.4 Considering the above facts, I confirm the levy of tax along with interest against the defect of Exempted Sales.”

The above conclusions were recorded without providing a personal hearing to the petitioner. Therefore, the impugned order is unsustainable.



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6. For reasons set out above, the impugned order dated 28.12.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit additional documents in support of its reply within 15 days 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 a fresh order within two months from the date of receipt of additional documents from the petitioner.

7. The writ petition is disposed of on the above terms without any 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,
Valluvar Kottam Assessment Circle,



W.P.No.9652 of 2024

No.10, Palaniyappa Maligai,
4th floor, Greaves Road,
Chennai-600 006.

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SENTHILKUMAR RAMAMOORTHY,J.

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