IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9955 of 2024
and
W.M.P.Nos.10970 & 10971 of 2024

Tvl. KAY PEE ESS Engineers,
Rep. by its Proprietor, Mr. Palani Saravanan,
No.15 C, High School Street,
Mittanamalli, Avadi,
Chennai – 600 055. ... Petitioner

Versus

The Assistant Commissioner,
Thirumullaivoyal Assessment Circle,
Integrated Building for Commercial Taxes,
No.32, Elephant Gate Bridge Road,
(Wall Tax Road),
Chennai – 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 19.02.2024 passed by the respondent against the petitioners GSTN-33BVVPS4030H1ZB, for the Assessment year 2018-19 and Quash the same as illegal and against the principles of natural justice.

For Petitioner : Mr. K.M. Malarmannan

For Respondent : Mr. T.N.C. Kaushik,
Additional Government Pleader.

ORDER

An order dated 19.02.2023 is challenged in this writ petition.

2. The petitioner had raised an invoice for a sum of Rs.1,41,600/- during the assessment period 2018-19. The petitioner asserts that two e-way bills were generated in respect of such invoice inadvertently. Upon receipt of the show notice dated 27.02.2023 in relation thereto, the petitioner replied on 03.03.2023 and stated that the second e-way bill was generated inadvertently and that only one transaction took place. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the reply to the show cause notice and to the relevant invoice. He submits that the tax proposal was confirmed without duly considering the reply. On instructions, he submits that the petitioner is willing to remit 10% of the disputed tax demand as a condition for remand.

4. Mr. T.N.C. Kaushik, learned Additional Government Pleader, accepts notice on behalf of the respondent. With reference to the impugned order, he contends that the petitioner failed to submit relevant documents to

establish that there was no case of sale suppression and that there was a *bona fide* mistake.

5. The petitioner's reply dated 03.03.2023 is on record. The petitioner stated that e-way bill No.581037635525 is correct whereas e-way bill No.511037633768 was generated inadvertently. Beyond this, the petitioner did not enclose any documents to establish that the above statement was correct. In the impugned order, it is recorded that the petitioner failed to produce the original invoice, the sales register for the relevant month and the GSTR-1 statement.

6. In order to establish that only one invoice was issued and paid for, the petitioner should have placed on record relevant documents, including the statement of accounts of the purchaser concerned. Nonetheless, in case the assertion of the petitioner is correct, injustice would be done unless the petitioner is provided an opportunity to establish that the second e-way bill was generated inadvertently. Solely for that reason, the impugned order herein warrants interference, albeit by putting the petitioner on terms.

7. Therefore, the impugned order is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand within two weeks from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is permitted to send a detailed reply to the show cause notice by enclosing all the relevant documents. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand was received, 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. W.P.No.9955 of 2024 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

16.04.2024

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

klt

To

The Assistant Commissioner,
Thirumullaivoyal Assessment Circle,
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SENTHILKUMAR RAMAMOORTHY,J

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