IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10079 of 2024
and
W.M.P.Nos.11098 & 11100 of 2024

Nagalingam Raja,
Rep.by its Proprietor, Mr N. Raja,
No.46, Dhandapani Nadar Street,
Ponneri, Chennai – 600 124. ... Petitioner

Versus

The State Tax Officer,
(Formerly known as Commercial Tax Officer),
Ponneri Assessment Circle,
Survey No.1275/3, Integrated Commercial Taxes Building,
Chennai (North Division),
Room No.106, Floor No.1,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records of the Respondent in Reference Number ZD3312232774498/2017-18 DT. 30.12.2023and quash the same as arbitrary, illegal.

For Petitioner : Mr. S. Ramanan

For Respondents : Mr. C. Harsha Raj,
Additional Government Pleader.

ORDER

An order dated 30.12.2023 is challenged by way of this writ petition.

2. The petitioner states that he is engaged in executing civil contracts in various government departments. Upon scrutinizing his returns, he received a notice in Form GST ASMT-10 dated 03.07.2023 with regard to discrepancy between the petitioner's GSTR-3B returns and Form 26AS. The petitioner asserts that he replied thereto on 27.07.2023 and pointed out that he received payments from M/s. Annai Infra Developer (P) Ltd. and M/s. Thomas Iyadurai Infrastructures (P) Ltd. during the financial year 2017-18 in respect of work executed before the entry into force of applicable GST enactments. This was followed by show cause notice dated 19.09.2023 and the impugned order.

3. Learned counsel for the petitioner referred to the reply and

pointed out that the petitioner is not liable to pay GST since the relevant work was executed when the Tamil Nadu Value Added Tax Act, 2006 was in force. He seeks another opportunity for the petitioner to establish that he is not liable. On instructions, he submits that the petitioner is ready and willing to remit 10% of the disputed tax demand as a condition for remand.

4. Mr. C. Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondent. He points out that there is no evidence of receipt of reply dated 27.07.2023 by the respondent. He also points out that the petitioner has not submitted supporting evidence, either by way of invoices or by way of proof that the petitioner paid VAT in respect of work executed prior to the entry into force of GST enactments. He also points out that the petitioner admitted that he did not reply to the show cause notice or participate in the proceedings.

5. As contended by learned Additional Government Pleader, there is no proof of receipt of the petitioner's reply dated 27.07.2023 by the

respondent. The petitioner also did not reply to show cause notice dated 19.09.2023. It is also noticeable that the petitioner had not annexed any documents to support the assertion that work was executed prior to the entry into force of GST enactments or to establish that VAT was paid in respect of the relevant work.

6. The petitioner contends that civil contracts were executed during the VAT period and had suffered tax then. Solely with a view to provide an opportunity to the petitioner, the impugned order calls for interference, albeit by putting the petitioner on terms.

7. Consequently, the impugned order dated 30.12.2023 is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand within two weeks from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is also permitted to submit a reply to the show cause. 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.10079 of 2024 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

17.04.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J

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