IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10120 of 2024
and
W.M.P.Nos.11157 & 11159 of 2024

M/s. S.P.P. Silks,
Rep.by S. Karthikeyan, Partner,
No.6, 6/1, 6/2, Easwaran Kovil Street,
Erode – 638 001. ... Petitioner

Versus

1.The State Tax Officer, Team Head,
Audit Team-1, Erode.

2.The Assistant Commissioner (ST),
Mettur Road Assessment Circle,
Erode – 638 001. ... 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 on the files of the second respondent in GSTIN 33ABRFS9234Q1Z7 /2017-2018 dated 29.12.23 and connected order in reference no. ZD331223256827B dated 29.12.23 and summary of the order in Form GST DRC-07 in reference no. ZD331223256827B dated 29.12.23 and quash the same as being without jurisdiction and violative of principles of natural justice and hence invalid and illegal.

For Petitioner : Mr. V. Srikanth

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

ORDER

An order dated 29.12.2023 is subject to challenge in this writ petition.

2. Pursuant to an audit of the petitioner's books of account, the petitioner raised objections in relation to audit observations. Such objections were not accepted. Therefore, an intimation was issued on 20.09.2023 in Form GST DRC-01. This was followed by a show cause notice dated 29.09.2023. The petitioner replied thereto on 26.12.2023. The impugned order dated 29.12.2023 was issued thereafter.

3. Learned counsel for the petitioner invited my attention to the intimation dated 20.09.2023 and show cause notice dated 29.09.2023. He pointed out that the audit observations were converted into the show cause notice and this is evident from the conclusions which are recorded in the show cause notice with regard to each alleged defect. By

comparing the intimation and the show cause notice, learned counsel points out that the same language is contained in the show cause notice and that this is a clear indication of predetermination. By referring to and relyin upon the judgment of the Hon'ble Supreme Court in *ORYX Fisheries (P) Ltd. v. Union of India (ORYX Fisheries), (2010) 13 SCC 427,* particularly paragraphs 22 to 25, 27, 31 & 32 thereof, learned counsel submits that proceedings pursuant to a show cause notice which does not provide the recipients of such notice a reasonable opportunity to respond meaningfully thereto are liable to be interfered with. By referring to the impugned order, learned counsel submits that the contents of impugned order, as regards conclusions recorded therein, are identical to the conclusions recorded in the show cause notice and in the earlier audit observations.

4. Mr. T.N.C. Kaushik, learned Additional Government Pleader, accepts notice on behalf of the respondents. He submits that the petitioner did not enclose necessary documents while objecting to the audit objections or responding to the show cause notice. In those

circumstances, he contends that the tax proposal was confirmed. In case the Court is inclined to interfere, he submits that the impugned order may be treated as a show cause notice.

5. The show cause notice deals with about six defects. By way of illustration, the operative portion of the show cause notice with regard to defect No.1 is set out below:-

> *" The reply filed by the taxpayer was verified. The annexure said to be filed as supporting documents are not clear and readable. Due to non compliance of section 16(2)(c) of TNGST Act, 2017 the reply filed by the taxpayer is not accepted and the demand proposed in the defect is confirmed. Accordingly tax liability is worked out as below:*

Tax (Rs.)			***Penalty (Rs.)***			***Interest***		
IGST	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*
9,43,609.00	*4,74,057.00*	*4,74,057.00*	*94,360.00*	*47,405.00*	*47,405.00*	*Interest will be levied till the payment of tax.*		

> *You are required to pay the above tax liability along with interest under Section 50 and penalty under Section 73(9) of TNGST Act 2017. "*

The above extract reveals that a conclusion was recorded instead of indicating the tax proposal and calling upon the petitioner to show cause in respect thereof.

6. The impugned order deals with the same six defects. The conclusion recorded therein in respect of defect No.1 is set out below:-

> "*The reply filed by the taxpayer was verified. The annexure said to be filed as supporting documents are not clear and readable. Due to non compliance of section 16(2)(c) of TNGST Act, 2017 the reply filed by the taxpayer is not accepted and the demand proposed in the defect is confirmed. Accordingly tax liability is worked out as below:*

Tax (Rs.)			***Penalty (Rs.)***			***Interest***		
IGST	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*
9,43,609.00	*4,74,057.00*	*4,74,057.00*	*94,360.00*	*47,405.00*	*47,405.00*	*Interest will be levied till the payment of tax.*		

> *You are required to pay the above tax liability along with interest under Section 50 and penalty under Section 73(9) of TNGST Act 2017.* "

7. It is conspicuous that the language used in both the show cause notice and the impugned order is identical. Therefore, it appears that

observations made in course of audit were converted into the show cause notice and eventually recorded as conclusions in the impugned order. In the process, the petitioner's replies were not taken into consideration.

8. The adjudication process would be robbed of meaning unless the authority undertaking adjudication acts in an objective manner without predetermining the issues arising for consideration. Since adjudication was not undertaken in such manner, the impugned order cannot be sustained. However, it shall be treated as a show cause notice and responded to.

9. In these circumstances, it is directed that the impugned order be treated as a show cause notice. The petitioner is permitted to submit a reply thereto within 15 days from the date of receipt of a copy of this order. Upon receipt of such reply, the second respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply after duly taking note of the observations set out

in this order.

10. W.P.No.10120 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
Speaking Order : Yes
Neutral Case Citation: No

klt

To

1.The State Tax Officer, Team Head,
Audit Team-1, Erode.

2.The Assistant Commissioner (ST),
Mettur Road Assessment Circle,
Erode – 638 001.

SENTHILKUMAR RAMAMOORTHY,J

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