IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10715 of 2024 and
W.M.P.Nos.11800 & 11803 of 2024

M/s.JSR Infra Developers Pvt. Ltd.,
Represented by Mr.J.Sekar,
Managing Director,
JSR Castle, 4th floor,
New no.17, Vijayaraghava Road,
T.Nagar, Chennai-600 017. ...Petitioner

Vs.

1. State Tax Officer,
Gudiyatham East Circle,
Integrated Commercial Tax Building,
No.127, Gandhi Road,
Nadupettai, Gudiyatham-632 602.

2. Assistant Commissioner (ST),
T.Nagar Assessment Circle,
No.46, 3rd floor, Greenways Road,
Mylapore Taluk Office Building,
Chennai-600 028. .. Respondents

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 Ref No. GSTIN 33AADCJ4440P1ZE (Assessment Year 2020-21) dated 09.11.2023 along with its summary in DRC-07 bearing reference No. ZD331123054826J dated 09.11.2023 passed by the first respondent and quash the same as the same being passed without jurisdiction, arbitrary, passed in violation of the principles of natural justice and without authority of law.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.T.N.C.Kaushik, AGP (T)

O R D E R

An order in original dated 09.11.2023 is challenged in this writ petition. Upon receipt of show cause notice dated 09.05.2023, the petitioner replied on 28.08.2023 and 31.08.2023. The impugned order was issued later on 09.11.2023.

2. Learned counsel for the petitioner referred to the impugned order at page nos.46 and 47 of the typed set of papers. As regards items 6 to 20 except items 12, 14 and 15, he submitted that all these items were subject to tax on reverse charge basis although these items are not notified for being taxed on reverse charge basis. In spite of providing an explanation that these expenses should be charged on forward charge and not on reverse charge basis, he submits that the tax proposal was

confirmed without providing any reason in support of such conclusions. As regards Sl.no.24 pertaining to ineligible Input Tax Credit (ITC), learned counsel referred to the petitioner's reply and pointed out that this item pertains to a purchase by the petitioner in respect of which there was tax collection at source. Notwithstanding the petitioner's reply to such effect, learned counsel pointed out that it was concluded in the impugned order that the tax payer failed to report the outward supply of the goods. As regards Sl.nos.1 to 4, which pertain to the discrepancy between the petitioner's GSTR 1 and GSTR 3B, learned counsel contended that tax was imposed at 24% instead of the applicable rate of 12%. In addition, he pointed out that the petitioner's explanations that the discrepancy was subsequently rectified or that such discrepancy arose as a result of payment being made for a lower amount upon undertaking measurement of the civil work executed by the petitioner, as the case may be, was disregarded. On instructions, he submits that the petitioner agrees to remit 10%, if tax liability is computed on these four items at 12% instead of 24%.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. By referring to the impugned order,

he points out that the principles of natural justice were complied with by duly taking note of the petitioner's reply to the show cause notice. He further submits that the impugned order is detailed and that findings were recorded therein after appraising the evidence on record. Consequently, he submits that no case is made out for interference under Article 226 of the Constitution of India.

4. As regards Sl.nos.6 to 20 of the table at page nos.46 & 47 of the typed set of papers, the objection of the petitioner is that most of these items do not fall within the reverse charge mechanism. On examining the impugned order in relation to these items, I find that the respondents have failed to examine as to whether tax liability may be imposed on the petitioner when the relevant goods or services do not fall within the reverse charge mechanism as per Section 9(3) read with applicable notifications in such regard. Therefore, the impugned order calls for reconsideration on these aspects.

5. Turning to item 24, which pertains to ineligible ITC, learned counsel for the petitioner contended that this pertains to purchases made

by the petitioner and that tax was collected at source in respect thereof. In spite of such reply, the finding recorded is as under:

> ***"3.TCS deducted on purchase of vehicles – Rs.95114334/-***
> *The tax payer had been engaged in works contract. If a registered dealer sells a used motor vehicle GST is applicable. The rate of GST applicable on the sale of used motor vehicles is at 18% irrespective whether the buyer is a registered person or end user. The GST is due on the margin-i.e. difference on purchase and selling value. They have not furnished the book value of the vehicles used.*
>
> *It is evidently proved that the tax payer had failed to report the outward supply of goods and discharged his tax liability during the year 2020-2021. Hence, the tax payer is liable to pay tax on Rs.95114334/- at 18% under CGST and SGST with interest. "*

The above finding reveals that the respondent proceeded on the basis that it was an outward supply of goods. Such conclusion indicates non application of mind. As regards items 1 to 4, the petitioner submitted an explanation that the discrepancy was rectified while filing subsequent returns or that the discrepancy occurred on account of lower payments being made. On examining the impugned order on this aspect, it is noticeable that the respondents were not fully satisfied with the documentary evidence placed on record by the petitioner. The failure of the petitioner to provide all relevant documents certainly contributed to the state of affairs. With regard to the findings on these issues, it is appropriate to put the petitioner on terms as a condition for reconsideration.

6. For reasons set out above, the impugned order is set aside subject to the condition that the petitioner remits 10% of the disputed tax demand as regards Sl.nos.1 to 4 on the assumption that tax is leviable at 12% thereon. Such remittance shall be made within two weeks from the date of receipt of a copy of this order. Subject to receipt thereof, the 1st respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of remittance 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.

24.04.2024

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

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To

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