



WEB COPY



W.P.No.11461 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11461 of 2024

and

W.M.P.Nos. 12566 & 12568 of 2024

Tvl. KCP Infra Limited,
Rep.by its Proprietor
Mr. P. Rangaraj.

... Petitioner

Versus

1.The State Tax Officer,
Office of the Joint Commissioner,
Group – VI, Inspection, Intelligence – I,
No.1, PAPJM Buildings,Greams Road,
Thousand Lights, Chennai – 600 006.

2.The State Tax Officer,
Group-1, Chengalpattu Intelligence Division,
No.870/2A, N.S.Garden, Kanchipuram High Road,
Thimmavaram, Chengalpattu – 603 101.

... 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 pertaining to the impugned order in Form DRC-07 bearing reference number ZD330224189017J/ 2021-22 dated 29.2.2024, issued by the 2nd Respondent and quash the same.

For Petitioner : Mr. S. Durairaj

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



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ORDER

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2. Pursuant to an inspection conducted in late January and early February 2023 under Section 67 of the Tamil Nadu Goods and Services Tax Act 2017, a sworn statement of Mr.V.Muthukumaran, Accounts Executive of the petitioner, was recorded on 30.01.2023. In course of inspection, 15 discrepancies were pointed out and the petitioner submitted a reply in relation to each discrepancy. Thereafter, the 1st respondent issued an intimation on 20.09.2023. The petitioner replied on 27.09.2023 and requested for an extension of time. Without providing such extension, the show cause notice was issued on 10.11.2023 and the impugned assessment order thereafter on 29.02.2024.

3. By inviting my attention to the reply dated 15.02.2023, learned counsel pointed out that each discrepancy was addressed therein. With specific reference to discrepancy '9', which pertains to Input Tax Credit (ITC) reversal for non payment for 180 days, learned counsel pointed out



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that the ageing report in respect of sundry creditors was provided by the petitioner. He further submits that the petitioner is entitled to claim ITC in respect of delayed payments subject to payment of interest. By thereafter referring to the intimation, show cause notice and the impugned assessment order, learned counsel points out that the reply of the petitioner at the inspection stage was completely disregarded. Apart from the ITC reversal due to non payment for 180 days, he also pointed out that the turnover pertaining to Andhra Pradesh was also taken into consideration from the financial statement although the petitioner had requested that such turnover be excluded in the reply dated 15.02.2023. He also pointed out that the petitioner had provided a trial balance with regard to the turnover from Tamil Nadu.

4. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit a sum of Rs.15,00,000/-, which has been computed by reckoning the disputed tax demand after excluding the claims relating to ITC reversal and turnover difference between GSTR-9 and the profit and loss account.

5. Mr.T.N.C.Kaushik, learned Additional Government Pleader,



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accepts notice for the respondents. He submits that the petitioner was provided several opportunities to contest the tax demand, and that a personal hearing was offered on at least three occasions. He further submits that the submission of documents by the petitioner in course of inspection does not absolve the petitioner of the responsibility of replying to the show cause notice and participating in assessment proceedings.

6. In course of inspection, the petitioner submitted a reply in February 2023. On perusal thereof, it is clear that the petitioner responded to each of the '15' discrepancies noticed during inspection. In particular, the petitioner responded to discrepancy '9' by providing an ageing report in respect of sundry creditors. In response to discrepancy '5', the petitioner stated that revenues from Andhra Pradesh had been included on the basis of the audited financial statement and that such inclusion is untenable. A trial balance was also submitted. Although the petitioner should have responded to the intimation and show cause notice and availed of the opportunity of personal hearing, in the above facts and circumstances, the impugned assessment order calls for interference albeit by putting the petitioner on terms.



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7. For reasons set out above, the impugned assessment order is quashed subject to the condition that the petitioner remits a sum of Rs.15,00,000/- as agreed to towards the disputed tax demand within a maximum period of two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Subject to the receipt thereof and upon being satisfied that the above mentioned sum of Rs.15,00,000/- was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of two months from the date of receipt of the petitioner's reply. While undertaking the above exercise, the assessing officer shall take note of the procedure prescribed in Circular No.12/2022 dated 26.09.2022 issued by the Commissioner of Commercial Taxes, Chennai.

8. W.P.No.11461 is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.



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Index : No

Speaking Order : Yes

Neutral Case Citation: No

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To

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