IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

WP.No.11473 of 2024
WMP.Nos.12583 and 12584 of 2024

Sethuramasamy Gopalakrishnan
Proprietor of M/s.Sri Jayamurugan Associates
Tiruppur, Tamil Nadu 642201 ... Petitioner

Vs

The Deputy Commercial Tax Officer (ST)
Udumalpet (North), Pollachi, Coimbatore 642001 ... Respondent

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the assessment order dated 09.05.2023, in ZD330523032967A, passed under Section 73 of the CGST/TNGST Act, 2017 for the tax period 2018-19 by the Respondent and to quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondent : Mr.C.Harsha Raj, AGP(T)

ORDER

1. An assessment order dated 09.05.2023 is challenged in this Writ Petition on the ground that the Petitioner's reply dated 01.03.2023 was not duly taken into account

2. The Petitioner assails the impugned order by contending that he is a provider of goods carriage services and had purchased vehicles for carrying the goods. Consequently, the Petitioner states that he was entitled to avail of the

benefit of input tax credit. Upon receipt of the intimation dated 07.12.2022, by a reply dated 05.01.2023, the Petitioner stated that the vehicles were purchased for carrying goods. The tax invoices relating to some of such purchases were enclosed. By a subsequent reply dated 01.03.2023 to the show cause notice dated 25.01.2023, the Petitioner also stated that the vehicles purchased by the Petitioner qualify as capital goods and that such goods are not excluded from input tax credit as per applicable GST enactments.

3. By referring to the impugned order, learned counsel for the Petitioner submits that the Petitioner's reply dated 01.03.2023 was not taken into account while confirming the tax proposal. Learned counsel further submits that the Petitioner was unaware of issuance of the impugned order and, therefore, could not approach this Court earlier On instructions, learned counsel submits that the Petitioner agrees to remit 15% of the disputed tax demand as a condition for remand.

4. Mr.C.Harsha Raj, Additional Government Pleader, appears on behalf of the Respondent. By drawing reference to the impugned order, he points out that the Petitioner merely submitted two purchase bills relating to the purchase of vehicles. He further submits that the impugned order records that the Petitioner failed to submit financial statements or explain as to why the bills relied on by the Petitioner were not reflected in GSTR-2A. He also points out that the input tax credit in respect of capital goods may only be availed of by apportioning such credit over the life of such capital goods.

5. On perusal of the impugned order, it is evident that two purchase bills that were submitted by the Petitioner as enclosures to the reply dated 05.01.2023 were referred to therein. However, there is no reference therein to the subsequent reply dated 01.03.2023. The Petitioner has approached this Court almost one year after the impugned order was issued. In these circumstances, reconsideration is warranted by putting the Petitioner on terms.
6. Therefore, the impugned order dated 09.05.2023 is set aside on condition that the Petitioner remits 15% of the disputed tax demand within a period of two weeks from the date of receipt of a copy of this order. Within the aforesaid period, the Petitioner is permitted to submit a further reply by enclosing all relevant documents. Upon receipt of such reply and upon being satisfied that 15% of the disputed tax demand was received, the Respondent is directed to provide a reasonable opportunity to the Petitioner, including a personal hearing, and thereafter issue fresh orders within a period of three months from the date of receipt of the Petitioner's reply. In view of the impugned assessment order being set aside, the bank attachment is raised.
7. With the above directions and terms, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

29.04.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

SENTHILKUMAR RAMAMOORTHY, J.

Srcm

To

1. The The Deputy Commercial Tax Officer (ST), Udumalpet (North), Pollachi, Coimbatore 642001

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