IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.11897 & 11903 of 2024 and
W.M.P.Nos.12999, 13000, 12992, 12995 & 12997 of 2024

In both WPs.

Tvl. Sri Balaji Blue Metals,
(Represented by its Proprietor Arunprasath)
No.3/4, Main Road,
Kondappanayanapalli Vill Po.
Bargur, Krishnagiri,
Tamil Nadu-635 108. .. Petitioner

vs

1. The Assistant Commissioner (ST)
Krishnagiri-II Circle,
Krishnagiri.

2. The Manager,
HDFC Bank Limited,
Ground Floor, Jagadevi Road, Bargur,
Krishnagiri, Tamil Nadu-635 104. ... Respondents

Prayer in W.P.No.11897 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the First respondent herein in the proceedings in GSTIN 33ARHPA0857D1ZD/2018-19 dated 16.08.2023 along with the accompanying FORM GST DRC-07 with Ref.No. ZD330823094233F dated 17.08.2023 for for the tax period JAN 2019 – MAR 2019, quash the same.

Prayer in W.P.No.11903 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the First respondent herein in proceedings in GSTIN 33ARHPA0857D1ZD/2019-20 dated 16.08.2023 along with the accompanying FORM GST DRC-07 with Ref.No. ZD330823094271F dated 17.08.2023 for the tax period APR 2019 – MAR 2020, quash the same.

In both WPs

For Petitioner : Mr.K.A.Parthasarathy
Mr.N.Chandirasekar
for Mr.N.Prasad

For Respondents : Mr.V.Prashanth Kiran,
Govt. Adv.(T) for R1

COMMON ORDER

Assessment orders in respect of two distinct assessment periods are challenged primarily on the ground of breach of principles of natural justice.

2. The petitioner is a partnership firm engaged in stone mining. As a small trader, the petitioner had entrusted the task of filing returns and handling GST compliance to an accountant. The petitioner asserts that he became aware of the impugned assessment orders only in the first week of March 2024. The present writ petitions were filed thereafter.

3. Learned counsel for the petitioner submits that the common issue in respect of these two assessment orders is the mismatch between the GSTR 3B returns filed by the petitioner and the auto-populated GSTR 2A returns. After submitting that the petitioner was unaware of the notices preceding the assessment orders, learned counsel submits that Circular No.183/15/2022-GST dated 27.12.2022 (Circular No.183) was issued to prescribe the procedure for dealing

with cases relating to mismatch between the above mentioned returns. Learned counsel contends that such Circular envisages the conduct of an enquiry by the assessing officer and that the tax payer is entitled to submit a certificate either from the supplier or from the Chartered Accountant depending on the quantum of discrepancy. Learned counsel further submits that even a detailed show cause notice was not issued in these matters and that only a summary was provided to the petitioner.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that the petitioner was provided sufficient opportunity, as is evident from the notice in Form ASMT-10 and the intimation preceding the show cause notices. He also submits that the statute imposes the burden on the tax payer to establish entitlement to Input Tax Credit (ITC) and that the petitioner completely failed to discharge such obligation.

5. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 10% of the disputed tax demand in respect of each assessment period as a condition for remand.

6. The documents on record disclose that the liability pertains to alleged mismatch between the GSTR 3B returns of the petitioner and the auto-populated GSTR 2A returns. In recognition of difficulties faced in this regard, Circular No.183 was issued. The petitioner has also placed on record a certificate from the Chartered Accountant with regard to the reason for disparity between the above mentioned returns. Although the petitioner did not respond to the notices and participate in the assessment proceedings, the above facts and circumstances justify interference with the impugned orders, albeit by putting the petitioner on terms.

7. For reasons set out above, the impugned assessment orders are quashed and both these writ petitions are remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand in respect of each assessment period within a period of 15 days 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. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand under each assessment period was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh assessment orders within a period of two months. In view of quashing the impugned order, the bank attachment shall stand raised.

8. Both these writ petitions are disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.04.2024

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

To

1. The Assistant Commissioner (ST)
   Krishnagiri-II Circle,
   Krishnagiri.

2. The Manager,
   HDFC Bank Limited,
   Ground Floor, Jagadevi Road, Bargur,
   Krishnagiri, Tamil Nadu-635 104.

SENTHILKUMAR RAMAMOORTHY J.

kal

W.P.Nos.11897 & 11903 of 2024 and
W.M.P.Nos.12999, 13000, 12992, 12995 & 12997 of 2024

30.04.2024