IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.12260, 12265, 12272, 12318 & 12344 of 2024
and
W.M.P.Nos.13349,13350,13354,13356,13361,13363,13421,13454 & 13458 of 2024

M/s. SRM Construction,
Rep.by its Partner, Mr. S. Boopathy,
#106, Periyar Nagar, Erode,
Tamil Nadu – 638001. ... Petitioner (in all W.Ps.)

Versus

The Deputy Commercial Tax Officer (ST-2),
Brough Road Circle,
Erode, Tamil Nadu. ... Respondents (in all W.Ps.)

Prayer in W.P.No.12260 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the the impugned order in Ref. No.ZD3310231670991 dated 27.10.2023 uploaded along with the summary of order in DRC07 for the Financial Year 2017-18 u/s 73 of the CGST/ TNGST Act, 2017 from the files of the respondent herein, QUASH the same.

Prayer in W.P.No.12265 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the impugned order in Ref. No.ZD331023044822V dated 9.10.2023 uploaded along with the summary of order in DRC07 for the Financial Year 2018-19 u/s 73 of the CGST/TNGST Act, 2017 from the files of the respondent herein, QUASH the same.

Prayer in W.P.No.12272 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the impugned order in Ref.No.ZD330823142181R dated 24.08.2023 uploaded along with the summary of order in DRC07 for the Financial Year 2019-20 u/s 73 of the CGST/TNGST Act, 2017 from the files of the respondent herein, QUASH the same.

Prayer in W.P.No.12318 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the impugned order in Ref. No. ZD3310230301548 dated 06.10.2023 uploaded along with the summary of order in DRC07 for the Financial Year 2021-22 u/s 73 of the CGST/TNGST Act, 2017 from the files of the respondent herein, QUASH the same.

Prayer in W.P.No.12344 of 2024 : Writ Petition filed under

Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the impugned order in Ref. No. ZD331023189645D dated 28.10.2023 uploaded along with the summary of order in DRC07 for the Financial Year 2020-21 u/s 73 of the CGST/TNGST Act, 2017 from the files of the respondent herein, QUASH the same.

In all W.P s. :

For Petitioner : Ms. Aparna Nandakumar

For Respondents : Mr. V. Prashanth Kiran,
Government Advocate

COMMON ORDER

In these writ petitions, in respect of five distinct assessment periods, orders imposing interest for belated filing of returns and payment of taxes are challenged.

2. Proceedings were initiated against the petitioner for belated filing of returns and payment of taxes for specific months. The petitioner did not reply to the respective show cause notice or participate in proceedings. The orders impugned herein were issued in the said facts and circumstances.

3. Learned counsel for the petitioner submits that there was sufficient credit available in the electronic credit ledger of the petitioner on the due dates for filing returns. Likewise, it is submitted that amounts were deducted by persons making payment to the petitioner and such amounts were also remitted into the electronic cash ledger of the petitioner. She contends that such amounts were also available as on the due dates for filing returns and such amounts were sufficient to discharge the tax liability of the petitioner at the relevant point of time. In support of these contentions, learned counsel places reliance on the judgment of this Court in *M/s. Refex Industries Limited v. The Assistant Commissioner of CGST & Central Excise (Refex Industries Ltd)*, order dated 06.01.2020 in W.P.Nos.23360, 23361 of 2019, with regard to the credit available in the electronic credit ledger. As regards the availability of cash in the electronic cash ledger, learned counsel relies on the judgment in *M/s. Eicher Motors Limited v. The Superintendent of GST and Central Excise & The Assistant Commissioner of Central Tax & Central Excise (Eicher Motors Ltd)*, order dated 06.01.2020 in W.P.Nos.16866 &

22013 of 2023.

4. In response to these contentions, Mr. V. Prashanth Kiran, learned Government Advocate, who accepts notice for the respondent, submits that disputed questions of fact are involved inasmuch it has to be ascertained whether sufficient credit or sufficient cash, as the case may be, was available on the due dates for filing returns by the petitioner for the relevant assessment periods. Consequently, he contends that the petitioner should be directed to avail of the statutory remedy. In any event, learned Government Advocate submits that the availability of cash in the electronic cash ledger does not tantamount to payment to the government. For this proposition, he relies on judgment of this Court in *India Yamaha Motor Private Limited v. The Assistant Commissioner & 3 Ors. (India Yamaha)*, order dated 29.08.2022 in W.P.No.19044 of 2009.

5. On perusal of the orders impugned herein, it is evident that the

proposal for imposing interest was confirmed because the petitioner failed to reply to the show cause notice. In effect, all these orders were issued without the petitioner being heard. In these circumstances, albeit by putting the petitioner on terms, it is just and appropriate that the petitioner be provided an opportunity to raise the contentions before the assessing officer.

6. For reasons set out above, the orders impugned herein are set aside subject to the petitioner remitting 10% of the interest amount specified in the impugned orders. Such remittance shall be made within 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. Upon receipt thereof and upon being satisfied that the payment of 10% of the interest mentioned in the impugned order 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. It is needless to say that amounts paid by the petitioner as a condition for remand shall abide by the outcome of the remanded

proceedings.

7. These Writ Petitions are disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

05.06.2024

Index : No
Speaking
Neutral Case Citation : No

klt

To

The Deputy Commercial Tax Officer (ST-2),
Brough Road Circle,
Erode, Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J
klt

W.P.Nos.12260, 12265, 12272, 12318 & 12344 of 2024
and
W.M.P.Nos.13349,13350,13354,13356,13361,13363,13421,13454 &
13458 of 2024

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