IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.14415 of 2024
and
W.M.P.Nos.15680 & 15682 of 2024

M/s. JSR Infra Developers Pvt. Ltd.,
Rep.by its
Managing Director Mr. J. Sekar. ... Petitioner

Versus

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.6, 3rd Floor, Greenways Road,
Mylapore Taluk Office Building,
Chennai – 600 028. ... 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 relating to impugned order bearing Ref. No.GSTIN 33 AADC J4440 PIZE / 2017 - 18 (Assessment Year -2017 -2018) dated 26/12/2023 along with its summary in Form GST DRC -07 bearing Reference No.ZD331223212078 W dated 26/12/2023 passed by the 1st 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. C. Natrajan, for Mr. G. Gokul Kishore.
For Respondents	:	Mr. V. Prashanth Kiran, Government Advocate (Tax)

ORDER

An order in original dated 26.12.2023 is assailed on the ground of non-application of mind and failure to consider the material placed on record by the petitioner.

2. The petitioner received a show cause notice dated 23.03.203 in respect of multiple heads of demand. The said show cause notice was replied to on 04.09.2023. The impugned order was issued thereafter on 26.12.2023.

3. Learned counsel for the petitioner refers to the reply dated 14.09.2023 and contends that the petitioner provided a detailed explanation with regard to the tax proposal. He points out that tax proposals Nos.1 and 3 relate to the difference between the GSTR 1 and GSTR 3B returns. While tax proposal No.1 is confined to July 2017, he points out that tax proposal No.3 relates to the entire assessment period of 2018-19. Therefore, he submits that there is duplication. As regards tax proposal No.6, he submits that GST is payable at 12% on road works irrespective of whether such services were provided directly to the government or not. Therefore, he submits that the confirmed tax proposal is contrary to Notification No.11/2017. As regards tax proposal No.7, which relates to a mismatch between GSTR 1 and Form 26AS, he submits that the reconciliation provided by the petitioner was disregarded while arriving at the conclusion. As regards the tax proposal relating to excess availment of Input Tax Credit, he submits that the petitioner had submitted certificate from suppliers but not from the chartered accountant of such suppliers.

4. In addition to all these submissions, learned counsel for the

petitioner submits that the impugned order is vitiated by lack of jurisdiction inasmuch as the petitioner's principal place of business is at T.Nagar, Chennai, whereas jurisdiction has been unlawfully exercised by the State Tax Officer, Gudiyatham.

5. Mr. V. Prashanth Kiran, learned Government Advocate, appears on behalf of the respondent. He points out that principles of natural justice were complied with. He further submits that the petitioner's reply to the show cause notice was taken into account while issuing the impugned order. In these circumstances, he contends that no case is made out for interference.

6. On examining the impugned order, there is no indication in tax proposal No.3 relating to the assessment period 2018-19 that the difference between the GSTR 1 and GSTR 3B returns for July 2017 was excluded therefrom. Therefore, it appears *prima facie* that the two tax proposals overlap. As regards the tax proposal relating to the rate of tax on road works, the petitioner has placed on record relevant notifications. These notifications indicate *prima facie* that the tax rate on road works is 12%,

even if the service is not provided directly to the government. Therefore, the matter requires reconsideration on this aspect. With regard to the tax proposal relating to trade payables, on examining the impugned order, it appears that such order was passed by assuming that 5% of the trade payables reflected in the financial statement were not paid within 180 days period. This conclusion is entirely speculative and, therefore, calls for interference. As regards the tax proposal relating to excess input tax credit being availed, in respect of supplies where the difference in ITC is more than Rs.5 lakhs, the petitioner should have produced certificates from the chartered accountants of the suppliers concerned. This does not appear to have been done by the petitioner.

7. Upon considering the above facts and circumstances cumulatively, it is just and necessary that the matter be remanded for reconsideration. Since a substantial tax demand is involved, even after excluding amounts payable with regard to tax proposals that appear to be *prima facie* untenable, revenue interest is required to be protected. Towards such end, the petitioner is directed to remit a sum of Rs.25 lakhs towards the disputed tax demand within 15 days from the date of receipt of

a copy of this order. On instructions, learned counsel for the petitioner submits that the petitioner agrees to make such remittance.

8. For reasons set out above, the impugned order dated 10.11.2023 is set aside on condition that the petitioner remits a sum of Rs.25 lakhs (Rupees Twenty Five Lakhs only) towards the disputed tax demand within 15 days from the date of receipt of a copy of this order. Subject to being satisfied that the said amount was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of a copy of this order.

9. For the avoidance of doubt, it is made clear that the observations set out in this order are tentative and not intended to influence the assessing officer while undertaking fresh assessment. In view of the assessment order being set aside, the bank attachment stands raised.

10. The Writ Petition is disposed of on the above terms. Consequently, the connected miscellaneous petitions are also closed.

24.06.2024
(1/2)

Index :No
Speaking
Neutral Case Citation :No

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