IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.19145 of 2021
and
W.M.P. No.20445 of 2021

M/s.G.M.Shiptech Training Private Limited,
Rep. By its Authorised Signatory,
Sri.R.Annamalai,
No.02/392 A, Mambakkam Road,
Medavakkam, Chennai-601 302. ... Petitioner

Vs.

Commissioner,
GST and Central Excise,
Chennai Outer,
Newry Towers, No.2054-I,
II Avenue, Anna Nagar,
Chennai-600 040. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the order in original No.51/2020 dated 28.05.2020 passed by the Respondent as against the show cause notice dated 30.12.2014 (despatched to petitioner on 07.01.2015) and to quash the same as barred by limitation, without any law and contrary to the provisions of Finance Act.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mr.M.Santhanaraman
Senior Panel Counsel

ORDER

The present writ petition is filed challenging the impugned order on the limited ground that the same has been made on 28.05.2020, i.e., after almost more than 3 years since the date of personal hearing.

2. It is submitted by the learned counsel for the petitioner by placing reliance on Circular No.1053/02/2017-CX dated 10.03.2017. It is necessary in terms of the above Circular for the adjudicating authority to pass orders within a period of 30 days from the date of receipt of personal hearing. The relevant portions of the same is extracted hereunder:

> *"14.10. Issue and Communication of order: In all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible as but not later than one month in any case, barring in exceptional circumstances to be recorded in the file. The order is required to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944."*

3. It was thus submitted by the learned counsel for the petitioner that the impugned order is contrary to the above circular and thus liable to be set aside.

4. It is submitted by the learned counsel for the Respondent by placing reliance upon the impugned order that the delay was only in view of the fact that the Respondent after conducting and concluding the personal hearing while holding the charges of Commissioner, GST and Central Excise, Chennai was unable to pass impugned order in view of the fact that there was reorganization pursuant to implementation of GST. Therefore, the Principal Chief Commissioner of GST and Central Excise, Chennai, vide his order in C.No.IV/16/376/2017-CCO (GST-3) dated 29.09.2017 in terms of the powers conferred under Section 37A of the Central Excise Act, 1944 as made applicable to Service Tax by Section 83 of the Finance Act, 1994, read with Notification No.06/2009-ST dated 30.01.2009 reassigned the show cause notice to the Respondent to conclude the adjudication. Accordingly, the Respondent herein had concluded the adjudication.

5. I also find that in similar circumstances, this Court has taken a consistent view that Circulars have to be complied and orders of adjudication made after the expiry of the time stipulated in the Circular were

set aside.

6. In view of the above, the impugned order is set aside and the matter is remanded back to the Respondent to pass orders after granting the petitioner a reasonable opportunity within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

05.03.2024

Speaking (or) Non-Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
The Commissioner,
GST and Central Excise,
Chennai Outer,
Newry Towers, No.2054-I,
II Avenue, Anna Nagar,
Chennai-600 040.

MOHAMMED SHAFFIQ, J.

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