IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15851 of 2024
&
WMP Nos.17277, 17292 & 17294 of 2024

M/s.Gayathri Construction,
Represented by its Partner Mr.A.Thirugnanam
MIG 303A, TNHB-Phase II 2nd Cross,
Mogappair West, Nolambur,
Chennai-600 037.. ... Petitioner

Versus

1.The Assistant Commissioner (ST) (FAC)
Thiruvottiyur Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai—600 003.

2. The Branch Manager,
Bank of Baroda,
No.30, Vallalar Street,
VGP Panner Nagar, Mogappair West,
Chennai-600 037. ...Respondents

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in GSTIN:33AAHFG5993R1ZJ/2017-2018 dated 28.12.2023 and the connected order dated 31.12.2023 passed under section 73 and the summary of the order dated 31.12.2023 in Form GST DRC-07 issued in Reference No:ZD331223293869Y and quash the impugned orders as passed contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017 and contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.C.harsha Raj
Addl. Govt. Pleader

ORDER

An order in original dated 28.12.2023 is assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. By asserting that the petitioner was unaware of proceedings culminating in the impugned assessment order because the show cause notice and other communications were uploaded on GST portal but not communicated to the petitioner through any other mode, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the tax proposal related to a mismatch between the petitioner's GSTR 3B returns and Form 26AS. He submits that the assessment period is 2017-18 and that the GST enactments came into force on 01.07.2017. By contrast, he points out that Form 26 AS reflects transactions for the entire financial year. According to learned counsel, this is the reason for mismatch. If provided an opportunity, learned counsel submits that the petitioner would be in a position to explain the mismatch. On instructions, he submits

that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the first respondent. He submits that principles of natural justice were complied with by issuing notice in Form ASMT 10 dated 05.07.2023, show cause notice dated 07.08.2023 and a personal hearing notice on 15.09.2023.

5. On examining the impugned order, it is evident that the tax proposal relates to the mismatch between the petitioner's GSTR 3B returns and the GSTR 9/9C returns, on the one hand, and Form 26AS, on the other. It is also clear that the assessment period is 2017-18 when the GST enactments came into force on 01.07.2017. Learned counsel for the petitioner contended that the reason for mismatch is that the pre-GST period from 01.04.2017 to 30.06.2017

is reflected in Form 26AS, whereas the same is not reflected in the GST returns of the petitioner. This aspect should be examined by the assessing officer. In view of the contention that the petitioner could not participate in proceedings on account of being unaware of of the same, the interest of justice warrants reconsideration by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 28.12.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand within two weeks from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit a reply to the show cause notice. On receipt of the petitioner's reply and on being satisfied that 10% of the disputed tax demand was received, the first 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 the petitioner's reply. On account of the assessment order being set aside, the bank attachment is raised.

7. W.P.No.15851 of 2024 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

26.06.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

kal

To

1.The Assistant Commissioner (ST) (FAC)
Thiruvottiyur Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai—600 003.

2. The Branch Manager,
Bank of Baroda,
No.30, Vallalar Street,
VGP Panner Nagar, Mogappair West,
Chennai-600 037.

SENTHILKUMAR RAMAMOORTHY,J

kal

W.P.No.15851 of 2024
&
WMP Nos.17277, 17292 & 17294 of 2024

26.06.2024