IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.18316 of 2024
and
W.M.P.Nos.20105 & 20106 of 2024

M/s. JSR Infra Developers Pvt. Ltd.,
Rep. by its Managing Director Mr. J. Sekar,
JSR Castle, 4th floor,
New No.17, Vijayaraghava Road,
T.Nagar, Chennai 600 017. ... Petitioner

Vs.

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.46, 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 the impugned order bearing Ref. No.GSTIN 33AADCJ4440PIZE (Assessment Year 2019 - 2020) dated 17/11/2023 along with its summary in Form GST DRC-07 bearing Reference No.ZD331123106863S dated 17/11/2023 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. G. Gokul Kishore
For Respondents	:	Mr. V. Prashanth Kiran, Government Advocate (Tax)

ORDER

An order in original dated 17.11.2023 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 09.05.2023 in respect of multiple heads of demand. The said show cause notice was

replied to on 14.09.2023. The impugned order was issued thereafter on 17.11.2023.

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 proposals. As regards tax proposal no.9, he submits that several items were subject to tax on reverse charge basis although these items are not notified for being taxed on reverse charge basis. In spite of providing an explanation that these expenses should be charged on forward charge and not on reverse charge basis, he submits that the tax proposal was confirmed without providing any reason in support of such conclusion. As regards tax proposal no.12, which relates to a mismatch between GSTR 9 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 certificates 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 respondents. 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, as regards the tax proposal relating to trade payables, it appears that such order was passed by assuming that 5% of the trade payables reflected in the financial statement were not paid within the 180 day 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. Audit slip tax proposal no.3 relates to the difference in inward supply value between the auto-populated GSTR 2A (higher value) and the profit and loss account (lower value). After making adjustments, tax was imposed by assuming that there was sales suppression as a consequence of inward supply suppression. This conclusion is also speculative and reconsideration is warranted. About two tax proposals were dropped and, therefore, it is sufficient if reconsideration is restricted to confirmed tax proposals.

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, impugned order dated 17.11.2023 is set aside partly (only insofar as confirmed tax proposals are concerned) 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 2nd 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 without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

30.07.2024

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

kj

To

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.46, 3rd Floor, Greenways Road,
Mylapore Taluk Office Building,
Chennai – 600 028.

SENTHILKUMAR RAMAMOORTHY,J

kj

W.P.No.18316 of 2024
and
W.M.P.Nos.20105 & 20106 of 2024

30.07.2024