



W.P.No.15553 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.15553 of 2024 and
W.M.P.Nos.16931 & 16934 of 2024

M/s.Banyan Engineers Contractors,
Represented by Proprietor Mr.Muralidharan,
Plot No.15, Jayasurya Street,
Gangai Nagar,
Kallikuppam, Ambattur, Chennai,
Tamil Nadu-600 053.

.. Petitioner

-VS-

1. The Deputy State Tax Officer-2,
Ambattur Assessment Circle,
Chennai-600 035.

2.The Deputy Commissioner, (GST Appeal)-II,
No.2054, I Block, II Avenue,
12th main road, Anna nagar,
Chennai-600 040.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records and to direct the 2nd respondent to condone the delay in filing the appeal against the order passed by the 1st respondent and admit the appeal that the



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petitioner Mr. Muralidharan having GSTIN-33ALVPM9963C1ZK/2017-2018 intends to file against impugned order in FORM GST DRC-07 vide Reference No:ZD331223258234Q dated 29.12.2023, which has confirmed the demand under Section 73 of SGST and stay the recovery proceedings being initiated by 1st respondent, failing which the same would cause undue financial hardship especially when the case is *prima facie* in their favour.

For Petitioner : Mr.A.P.Ravi

For Respondents : Mr.T.N.C.Kaushik, AGP (T)

ORDER

By this writ petition, the petitioner seeks condonation of delay in filing an appeal against the order dated 28.12.2023.

2. The petitioner states that he is an ex-service man engaged in construction work for Government projects. A show cause notice dated 26.09.2023 was received by the petitioner. In such show cause notice, the petitioner was called upon to show cause with regard to the significant difference between the turnover reflected in the GSTR 2A with regard to supplies and the outward supplies reflected in the petitioner's GSTR 3B returns. By reply dated 26.12.2023, the petitioner pointed out that the value



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of supplies in the GSTR 3B is lower on account of the nature of business in as much as it takes time for the purchases to get converted into outward supplies. The petitioner also provided an explanation with regard to the mismatch in Input Tax Credit (ITC). The order dated 28.12.2023 was issued in these facts and circumstances. The petitioner seeks leave to file an appeal against such order.

3. Learned counsel for the petitioner points out that the show cause notice was limited to the difference between the value of purchases and the outward supplies in the petitioner's GSTR 3B returns, whereas the impugned order deals with the mismatch between the ITC claimed in the petitioner's GSTR 3B returns and the auto-populated GSTR 2A. Since a reasonable opportunity to show cause against the said mismatch was not provided, learned counsel submits that interference is warranted.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. He points out that the order in original was issued after complying with principles of natural justice.



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5. The show cause notice clearly indicates that the tax proposal pertains to the lack of proportionality between the outward supplies reflected in the petitioner's GSTR 1 statement and the purchase value reflected in the GSTR 2A. By contrast, on examining the impugned order, the confirmed tax proposal relates to the excess transitional credit claimed by the petitioner. Since this issue was not raised in the show cause notice, as contended by learned counsel for the petitioner, interference is warranted.

6. However, the petitioner failed to challenge the order within the limitation period and, therefore, it is necessary to put the petitioner on terms. On instructions, learned counsel for the petitioner agrees to remit 10% of the disputed tax demand as a condition for reconsideration.

7. In these circumstances, it is just and appropriate that the impugned order be treated as a show cause notice so as to enable the petitioner to respond to the issue relating to mismatch between the petitioner's GSTR 3B return and the auto-populated GSTR 2A.



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8. Accordingly, W.P.No.15553 of 2024 is disposed of by directing that the order dated 28.12.2023 be treated as a show cause notice. The petitioner shall remit 10% of the disputed tax demand as agreed to within 15 days from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is permitted to submit a reply to the show cause notice. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the 1st respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply.

9. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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To

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