IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17156 of 2024
and
W.M.P.Nos.18938 & 18939 of 2024

M/s. Oscar Construction Company,
Rep.by its Proprietor,
Mr. V. Baskar. ... Petitioner

Versus

1.Commissioner of GST & Central Excise (Appeals -I),
No.26/1, Mahatma Gandhi Road,
Chennai – 34.

2.The Deputy Commissioner of GST and Central Excise,
Purasawalkam Division,
Chennai North Commissionerate,
1st Floor, Newry Towers,
No.2054 -I, Anna Nagar,
Chennai – 600 040. ... 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 of the second respondent in Order-in-Original No.117/2022 dated 20.06.2022 and the first respondent in Order-in-Appeal No.79/2024 (CTA-1), dated 23.02.2024, and quash these orders as arbitrary and illegal and/or pass any writ, order or direction which this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr. T. Ramesh Kutty,
Senior Standing Counsel.

ORDER

Both an order in original dated 20.06.2022 and the appellate order dated 23.02.2024 are challenged in this writ petition.

2. The petitioner was hospitalized in December 2021 for “triple vessel coronary artery disease”. Prior thereto, personal hearings were scheduled by the original adjudicating authority and the petitioner did not attend such personal hearings. The order in original was issued in the said facts and circumstances on 20.06.2022. When such order was carried on appeal, the appeal was rejected on the ground of limitation. The present writ petition was filed thereafter.

3. Learned counsel for the petitioner submits that the petitioner had provided construction services. In respect of construction services, he submits that only the service portion thereof is liable for service tax as per Section 60B r/w Section 66E of the Finance Act, 1994. He also submits that the petitioner is entitled to the benefit of abatement and to the liability being limited to 50% with the remaining 50% being borne by the recipient of services. He points out that 7.5% of the tax demand was remitted while presenting the statutory appeal and that the petitioner be provided another opportunity. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit an additional 7.5% of the disputed tax demand as a condition for remand.

4. Mr. T. Ramesh Kutty, learned senior standing counsel, accepts notice for the respondents. He submits that the petitioner failed to appear at the personal hearings. He also points out that the appeal was filed with considerable delay and that, therefore, the appellate authority was constrained to reject the appeal.

5. The petitioner has placed on record the discharge summary issued by the Apollo Hospital, Chennai. The said document records that the petitioner was admitted with “triple vessel coronary artery disease”. It also records that the petitioner was diagnosed as a diabetic 13 years earlier. In the affidavit, the petitioner has stated that he was unable to appear at the personal hearings on account of being severely affected by the COVID-19 pandemic. The petitioner also makes references to his heart condition. These facts and circumstances warrant providing the petitioner an opportunity by putting the petitioner on terms. By taking into account the fact that the petitioner had earlier remitted 7.5% towards tax demand, reconsideration is necessary by directing the petitioner to remit an additional 7.5% of the disputed tax demand.

6. Therefore, the impugned order dated 20.06.2022 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits an additional 7.5% of the disputed tax demand within 15 days from the date of receipt of a copy of this order. The petitioner is also permitted to file an additional reply along with supporting documents within the aforesaid period. Upon receipt thereof and upon being satisfied that an

additional 7.5% of the disputed tax demand was received, the second 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.

7. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

15.07.2024

Index :No
Speaking Order : Yes
Neutral Case Citation: No

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To

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SENTHILKUMAR RAMAMOORTHY,J.

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