IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17187 of 2024
and W.M.P.Nos.18966 & 19159 of 2024

M/s.Dynamic SS Engineering Company Pvt. Ltd.
Rep.: by its Managing Director,
76/34, C-4, Amuthini Flats, Vinayagam Street,
Virugambakkam,
Chennai-600 092. ... Petitioner

-vs-

1.Assistant Commissioner (ST) FAC,
Saligramam Assessment Circle,
15/16, Malligai Avenue, Kolathur,
Chennai-600 099.

2.Branch Manager,
Bank of India,
Luz Church Road, Mylapore,
Chennai-600 004. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in GSTIN:33AABCD3363P1ZI dated 01.06.2023 for the year 2018-2019 and to quash the above impugned assessment proceedings as illegal and direct the first respondent to drop the levy of interest and penalty levied in this case.

For Petitioner : M/s.C.Baktha Siromani

For Respondents : Mr.T.N.C.Kaushik
Addl. Govt. Pleader (Taxes) for R1

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ORDER

An order in original dated 01.06.2023 is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. The petitioner asserts that it is a works contractor. It is further stated that work was executed as a sub-contractor for BGR Energy Systems Ltd. On account of non-payment by the Government to BGR Energy Systems Ltd, it is stated that the main contractor failed to make payments to the sub-contractor. The impugned order was issued in these facts and circumstances.

3. Learned counsel for the petitioner requests that the petitioner be provided an opportunity to contest the tax demand on merits. On

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

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the first respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 18.03.2023 and by offering a personal hearing by reminder notice dated 09.05.2023.

5. On perusal of the impugned order, it is evident that the tax proposal was confirmed because the taxpayer failed to reply to the show cause notice or participate in the personal hearing. Since the order was issued without the petitioner being heard, the interest of justice warrant reconsideration subject to putting the petitioner on terms.

6. Therefore, the impugned order dated 01.06.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of ***fifteen days*** from the date of

receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon 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 a period of ***three months*** from the date of receipt of the petitioner's reply. On account of the impugned assessment order being set aside, the bank attachment is raised.

7. W.P.No.17187 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18966 & 19159 of 2024 of 2024 are closed.

15.07.2024

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

To

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<u>SENTHILKUMAR RAMAMOORTHY,J</u>

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