IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.19998 of 2024
and
W.M.P.Nos. 21892 & 21893 of 2024

SKS. Resorts India Private Limited,
(GSTIN 33AAVCS7988M1Z2),
Rep. by N.C Jyotish Kumar. ... Petitioner

Versus

1.The Deputy Commissioner (ST) (FAC),
GST Appeals, Coimbatore.

2.The State Tax Officer,
Uthagai North Circle, Uthagamandalam.

3.ICICI Bank,
Rep. by its Branch Manager,
Udhagamandalam Branch,
167M Churchill Road, Udhagamandalam,
The Nilgiris District 643001. … Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent pertaining to the impugned order bearing reference MP.1766/2024 dated 02-07-2024, quash the same as illegal restore the Appeal of the Petitioner and consequently direct the

Respondents remove the Lien marked in its Bank Accounts held with the 3rd Respondent bearing Account Numbers 777705300400 and 155805001228.

For Petitioner : Mr. P. H. Aravindh Pandian, Senior Counsel.

For Respondents : Mr.T.N.C. Kaushik, Additional Govt. Pleader.

ORDER

An order dated 02.07.2024 rejecting the petitioner's appeal is challenged in this writ petition.

2. The petitioner's business was closed by sealing the premises on or about 15.10.2022. Thereafter, pursuant to show cause notice dated 10.08.2023, *ex-parte* order dated 19.09.2023 was issued. The petitioner approached this Court by filing W.P.No.36414 of 2023 for a direction to process the petitioner's application for a permit from the appropriate development authorities. Such writ petition was disposed of by order dated 11.03.2024 directing the consideration and disposal of the application for a planning permit within the specified time limit. The petitioner presented an appeal before the appellate authority in April 2024 and has challenged the order rejecting such appeal.

3. Learned senior counsel for the petitioner invited my attention to the order dated 11.03.2024 in W.P.No.36414 of 2023. He submits that the petitioner's operations had been shut down and, therefore, the petitioner was unable to keep track of the show cause notice and other communications, which had been uploaded on the GST portal. As a result, he submits that there was a delay of 74 days in lodging the appeal. He also points out that the entire tax liability of about Rs.20,80,968/- was discharged. He submits that the petitioner's challenge is confined to the imposition of interest and penalty.

4. Mr. T.N.C. Kaushik, learned Additional Government Pleader, accepts notice for the respondents. He submits that the tax proposals were confirmed by the order in original because the petitioner failed to respond to the show cause notice. He also submits that the appellate authority rejected the appeal because such appeal was presented about 74 days after the expiry of the condonable period.

5. The petitioner has placed on record two challans evidencing payment of sums of Rs.17,26,235/- and Rs.1,22,537/-. At paragraph no.14

of the affidavit, it is stated that an aggregate sum of Rs.20,80,968/-was paid towards discharge of tax dues. From the order dated 11.03.2024 in W.P.No.36414 of 2023, it appears that the application for planning permission was directed to be considered and disposed of by the appropriate authorities by such order. The petitioner was unable to carry on business for an extended period in this circumstance. When considered cumulatively, especially in the context of the order in original being an *ex-parte* order and the entire tax liability having been discharged, the facts and circumstances justify reconsideration as regards interest and penalty by the original authority. Towards such end, the relief prayed for is required to be moulded.

6. For reasons set out above, W.P.No.19998 of 2024 is disposed of by setting aside the order in original dated 19.09.2023 insofar as interest and penalty are concerned and by remanding the matter for reconsideration. The petitioner is permitted to submit a reply to the show cause notice dated 10.08.2023 within 15 days from the date of receipt of a copy of this order. Upon receipt thereof, 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. In view of the assessment order being set aside, the bank attachment is raised.

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.

25.07.2024
(1/2)

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

klt

To

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2.The State Tax Officer, Uthagai North Circle, Uthagamandalam.

3.ICICI Bank,
Rep. by its Branch Manager,
Udhagamandalam Branch, 167M Churchill Road, Udhagamandalam,
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SENTHILKUMAR RAMAMOORTHY,J.

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