IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Writ Appeal Nos.2256 and 2258 of 2024
and C.M.P.Nos.15892 and 15898 of 2024

Dynamed Equipments
A Proprietory Concern Mr.V.C.Surendranath
Proprietor, No.4 and 5, Dhanarajapuram
Kolathur, Chennai 600 099. ... Appellant in both appeals

Vs.

The Assistant Commissioner (ST)
Intelligence-I, Avadi Assessment Circle
Room No.241, 2nd Floor, PAPJM Building
Greams Road, Chennai 600 006. .... Respondent in both appeals

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Writ Appeals under Clause 15 of the Letters Patent against the order dated 18.06.2024 in W.P.Nos.12715 and 12720 of 2024.

For Appellant : Mr.J.Narayanaswamy

For Respondent : Mr.C.Harsharaj
Additional Government Pleader

J U D G M E N T

(Delivered by R.SURESH KUMAR,J.)

These writ appeals have been filed by the assessee against the order dated 18.06.2024 passed by the Writ Court in W.P.Nos.12715 and 12720 of 2024/

2. It is the contention of the learned counsel for the appellant / assessee that, Form GST DRC-01 was issued on 13.09.2023 and on 09.10.2023 a detailed notice was issued under nine heads, where the proposed tax to be levied on the appellant / assessee was arrived at Rs.1,32,42,139/-. Due to some unforeseen reasons, despite opportunity having been given to the appellant / assessee, no reply had been given to the show cause notice and there has been no participation by the assessee in the assessment proceedings. Resultantly, final order has been passed by the assessing authority on 31.01.2024, whereby tax demand of a sum of Rs.3,16,73,012/- for the assessment year 2018-19 and Rs.4,17,27,003/- for the assessment year 2019-20 has been demanded.

3. As against these assessment and demand orders, including the interest and penalty which has also been imposed, the appellant / assessee filed the aforesaid two writ petitions in W.P.Nos.12715 and 12720 of 2024.

4. When these writ petitions were decided, the learned Judge found that though opportunity had been given to the assessee / writ petitioner, he had not chosen to appear before the authority in order to give any reply. Further, it was also found that the show cause notice had been given only with regard to the proposal of assessing tax and not for the interest and imposing of the penalty. Insofar as the interest component and the penalty aspect, since no opportunity had been given to the petitioner / assessee, the learned Judge deemed it appropriate to interfere with the order impugned before the writ Court.

5. Ultimately, the learned Judge has passed the following order:

" 4. On examining the summary of show cause notice and detailed notice, it is clear that the detailed notice deals with nine tax proposals. The said nine tax proposals correspond to those specified in the earlier intimation. It is, however, noticeable that there was no proposal with regard to interest and penalty. In the impugned order, penalty was imposed at 10%. Thus, as regards interest and penalty, the petitioner did not have an opportunity to respond to the proposal. For such reason, the order calls for interference. Since the petitioner did not respond in spite of several opportunities being provided, it is just and appropriate that the petitioner be put on terms. On instructions, learned counsel for the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand."

6. Heard Mr.C.Harsha Raj, learned Government Advocate appearing for

the respondent Revenue, who pointed out that in fact before the writ Court, the writ petitioner / assessee, who is the appellant herein has agreed upon to pay 10% of the disputed tax demand as a condition for remand, as the writ Court decided to remand the matter only on some terms and this has been recorded in Para 4 of the order, which we have cited herein above.

7. We have considered the submissions by learned counsel for both sides and have gone through the records available before us.

8. The first submission of the learned counsel for the appellant assessee insofar as the show cause notice that was issued in respect of nine issues and the ultimate decision taken by the assessing authority in completing the assessment and passing the order of assessment and demand is that, though the assessing authority has confined himself only to five issues at the time of passing final order even though the proposal was given for nine issues, now by virtue of the remand order, which is impugned herein, in entirety for the entire nine issues, once again it is going to be re-assessed, by which the appellant/assessee is prejudiced.

9. The second submission of the learned counsel for the appellant is that, even though there was a proposal for 'x' sum, ultimate final order of assessment has been made with a different sum ie., 200% enhanced amount. Therefore, that goes against Section 75(7) of the GST Act.

10. Insofar as these two contentions are concerned, as we have gone through the show cause notice as well as the final order passed by the assessing authority and as pointed out by the learned Government Advocate appearing for the respondent Revenue, we were able to find that both in the show cause notice as well as in the final assessment order, the proposal under nine heads have been mentioned and has been considered and final order also had been passed for all the nine heads. Therefore, the first contention of the learned counsel cannot be countenanced.

11. Insofar as the second contention that the order impugned before the writ Court was in violation of Section 75(7) of the Act is concerned, we have gone through the said provision and we do not find any reason to accept the contention of the learned counsel for the appellant, the reason being that, since the amount mentioned in the proposal, if it is calculated totally under the nine heads, certainly that would match with the final figure arrived at by the assessing authority in the final assessment order. Moreover, now by virtue of the order that has been made by the writ Court, of course on payment of 10% of the disputed tax, for which the appellant agreed upon before the writ Court, the second contention also cannot be countenanced.

12. Therefore, we do not find any plausible reason to interfere with the order passed by the writ Court, which is impugned in these writ appeals. Resultantly, while we affirm the impugned order, we are inclined to give a slight modification to make payment of 7.5% of the disputed tax instead of 10% as ordered by the writ Court, within a period of three months from the date of receipt of a copy of this order. On making such payment, the assessing authority shall proceed with the re-assessment as per the remand order passed by the writ Court through the impugned order and, after giving an opportunity of being heard to the appellant / assessee, final decision shall be made on merits and in accordance with law. It is made clear that if the modified condition of making the payment of 7.5% of the disputed tax is not complied within the time limit stipulated above, it is open to the assessing authority to proceed with the re-assessment and pass final orders on merits and in accordance with law on the basis of the available records. With the above directions, the writ appeals are disposed of. No costs.

(R.S.K.,J.) (C.S.N.,J.)
29.08.2024

NCS : Yes/No
Index : Yes/No
KST

To

The Assistant Commissioner (ST)
Intelligence-I, Avadi Assessment Circle
Room No.241, 2nd Floor, PAPJM Building
Greams Road, Chennai 600 006.

R.SURESH KUMAR, J.
AND
C.SARAVANAN, J.

KST

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