



WEB COPY



W.P.No.22357 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.22357 of 2024
and
W.M.P Nos.24346 and 24350 of 2024

Tvl.Bright Power Projects India Pvt. Ltd.,
Represented by its Authorized Representative, U.V.Kamath,
No.73, Post Office Road,
Suramangalam, Salem - 5.

... Petitioner

Vs.

1. The Assistant Commissioner (ST) (FAC),
Suramangalam Circle, Salem.
2. The Assistant Commissioner (ST),
Suramangalam Assessment Circle,
Salem - 636 007, Tamil Nadu.
3. The Branch Manager,
Axis Bank, AC Market Building, 3rd Floor,
1 Shakespeare Sarani,
Kolkata - 700 071.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records of the first respondent order dated 29.12.2023 in Ref.No.ZD331223253373R and



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consequential recovery notice in Roc.369/A1/2024, dated 17.05.2024 issued by the second respondent to the third respondent and to quash the same as it has been in violation of principles of natural justice.

For Petitioner : M/s.Adithya Reddy

For Respondents : Mr.G.Nanmaran
Special Government Pleader (T)

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorari, to call for the records of the first respondent order dated 29.12.2023 in Ref.No.ZD331223253373R and consequential recovery notice in Roc.369/A1/2024, dated 17.05.2024 issued by the second respondent to the third respondent and to quash the same as it has been in violation of principles of natural justice.

2. The allegation was that pertaining to difference in GSTR 2A and GSTR 3B and that the petitioner has violated the provision of Section 16 of the TNGST/CGST Act, 2017. It is submitted that the Hon'ble Kerala High Court in the case of *M/s.Diya Agencies Vs. State Tax Officer* in *W.P.(C) 29769 of 2023*,



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dated 12.09.2023, it was held the difference between GSTR 2A and GSTR 3B should not be the sole basis for denial of the claim for ITC when there is evidence on record to prove that the claim of ITC is *bona fide* and genuine.

3. It is the further case of the petitioner that the entire communications were uploaded in web portal under "View Additional Notices/Orders" column and hence, the same was not aware of the same. Only after receiving a call from the third respondent that recovery action was initiated, the petitioner came to know regarding the notices and orders. Therefore, the order passed by the respondent is in violation of principles of natural justice.

4. The learned counsel for the petitioner further submits that after filing of the Writ Petition, the entire tax demand was recovered from the petitioner by the respondents. Hence, the impugned order passed by the first respondent dated 29.12.2023 is liable to be set aside.

5. The learned Special Government Pleader for the respondents would submit that the notices and orders were issued through the GST Portal and hence, the Petitioner cannot complain of the breach of principles of natural



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justice. However, he would fairly submit that if any order is passed by this Court, the same will be complied with by the respondents.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and perused the materials placed before this Court.

5. Considering the facts that the notices and orders were uploaded in the portal under the Additional Notices Column and therefore, the petitioner had no occasion to view the said column and the impugned order was passed without affording an opportunity to the petitioner to establish his case before the authorities concerned, which is clear violation of principles of natural justice and the entire tax demand was recovered from the petitioner, this Court is inclined to set aside the impugned order dated 29.12.2023 in Ref.No.ZD331223253373R and consequential recovery notice in Roc.369/A1/2024, dated 17.05.2024 issued by the second respondent to the third respondent are set aside. While setting aside the impugned order as well as the recovery notice, this Court remits the matter back to the first respondent for reconsideration. The petitioner is directed to file a reply within a period of two



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(2) weeks. After receipt of the reply, the authorities concerned shall fix a date for personal hearing by sending a physical notice to the petitioner providing 14 days time and thereafter, pass orders on merits and in accordance with law.

With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

13.08.2024

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To

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KRISHNAN RAMASAMY, J.

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