IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.25101 of 2024
and
W.M.P.Nos.27429 and 27430 of 2024

Tvl.Sri Valli Engineering,
Rep. by its Partner - R.Shanmugam,
40, Kamatchi Amman Kovil Street,
Chidambaram, Cuddalore - 608 001. ... Petitioner

Vs.

1. The Deputy State Tax Officer (FAC),
   Office of Deputy Commercial Tax Officer,
   Chidambaram - 2, Cuddalore.

2. The State Tax Officer,
   Office of the Commercial Tax Officer,
   Chidambaram - II, Cuddalore. ... 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 on the files of the impugned proceedings of the 1st respondent in GSTIN:33ACCFS3068C1ZH/ 2018-19, dated 30.04.2024 along with consequential order in Form GST DRC-07 bearing a Ref. No.ZD330424260487C, dated 30.04.2024 for the tax period 2018-19 and quash the same.

For Petitioner : Mr.R.Hemalatha

For Respondents : Mr.Amirta Poonkodi Dinakaran
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 on the files of the impugned proceedings of the first respondent in GSTIN: 33ACCFS3068C1ZH/2018-19 dated 30.04.2024 along with consequential order in Form GST DRC-07 bearing Ref. No.ZD330424260487C, dated 30.04.2024 for the tax period 2018-19 and quash the same.

2. The learned counsel for the petitioner submits that the petitioner has filed the reply to the show cause notice, but, they were not in a position to file the relevant document, which is the certificate from the supplier, since the supplier failed to file the return in time. Now the issue is pertaining to the mismatch.

3. She further submits that now the petitioner has obtained the certificate from the Supplier and the same can be filed before the authorities concerned. Hence, the impugned order passed by the first respondent may be set

aside.

4. Per contra, the learned Government Advocate appearing for the respondents would submit that if any additional document is available with the petitioner, there is an alternative appeal remedy available and hence, those documents can very well be produced before the appellate authority. If the Appellate Authority would send back the matter on the issue of mismatch of particular document, thereafter, after receipt of the orders passed by the Assessing Officer, the Appellate Authority can pass orders.

5. The learned counsel for the petitioner further submits that the petitioner is ready to deposit 10% of the disputed tax demand and hence, the matter may be remanded to the first respondent for consideration.

6. The learned Government Advocate would submit that in the event of deposit of 10% of the disputed tax demand, the request of the petitioner may be considered.

7. Heard the learned counsel appearing for the petitioner and the

learned Government Advocate appearing for the respondent and perused the materials placed before this Court.

8. In the present case, the show cause notice was issued and the reply was also filed and it was fault on the part of the petitioner that they have not filed the reply along with relevant document pertaining to the mismatch, due to the reason that the Supplier failed to file GSTR 3B, in time. Had the petitioner filed this document earlier, the impugned assessment order would have been dropped. Under this circumstance, in the interest of justice, this Court feels it appropriate to provide one more opportunity to the petitioner to establish their case before the authorities concerned as regards mismatch by producing the vital document pertaining to the mismatch, which is stated to have been obtained from the Supplier.

9. Therefore, this Court is inclined to set aside the impugned order dated 30.04.2024 and accordingly, the same is set aside. While setting aside the impugned order, this Court remits the matter back to the first respondent for consideration on condition that the petitioner shall pay 10% of the disputed tax demand within a period of four (4) weeks from the date of receipt of a copy of this order. The petitioner is directed to file their reply along with the certificate

now said to have been obtained from the Supplier, within a period of two (2) weeks from the date of deposit of 10% of the disputed tax demand. On filing of such reply/objection by the petitioner, the first respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

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

30.08.2024

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To

1. The Deputy State Tax Officer (FAC),
   Office of Deputy Commercial Tax Officer,
   Chidambaram - 2, Cuddalore.

2. The State Tax Officer,
   Office of the Commercial Tax Officer,
   Chidambaram - II, Cuddalore.

KRISHNAN RAMASAMY, J.

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